
Randwick Local Planning Panel (Electronic) Meeting

Thursday 27 November 2025



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Team on Thursday, 27 November 2025

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D71/25

Subject: 323 Clovelly Road, Clovelly (DA/984/2025)

Executive Summary

Proposal: Alterations and additions to existing mixed-use development including first floor addition (Heritage Item).

Ward: North Ward

Applicant: Mr D Anderson

Owner: Mr U Ucak & Mrs B Ucak

Cost of works: \$492,800.00

Reason for referral: The development involves demolition of a heritage item

Recommendation

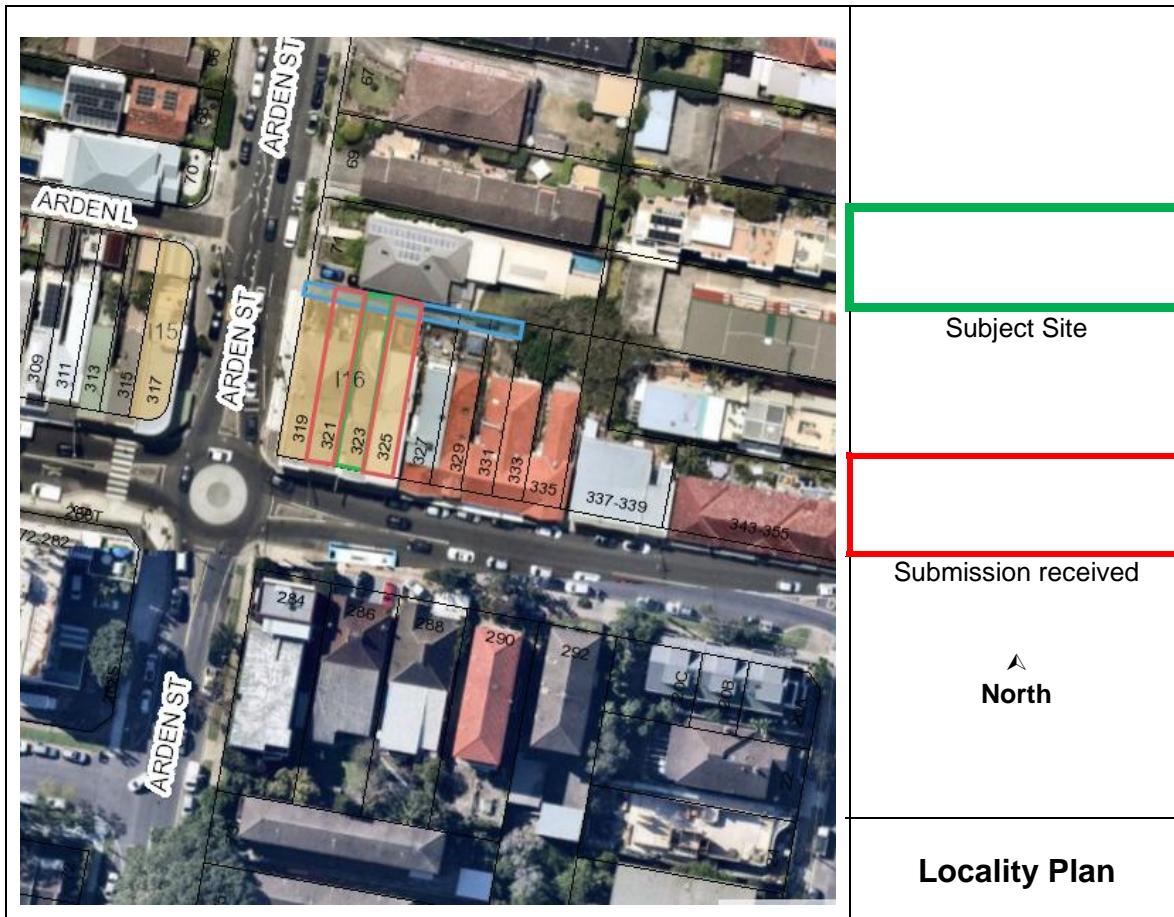
- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/984/2025 for alterations and additions to existing mixed-use development including first floor addition (Heritage Item at No. 323 Clovelly Road, Clovelly NSW 2031, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/984/2025 - 323 Clovelly Road, CLOVELLY NSW 2031 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves demolition of a heritage item being a terraced building that is part of a row of terraced mixed-use buildings known as 'Walders corner'.

The proposal seeks development consent for alterations and additions to an existing mixed-use part one, part two storey building currently containing a ground floor shop with a two-bedroom dwelling above and behind. The proposal would reconfigure the residential component into two dwellings:

- A one-bedroom dwelling (46m²) above the shop; and
- A two-bedroom dwelling over two levels (64m²) located behind the shop and at first floor level at the rear.

The key issues associated with the proposal relate to the compact size of the proposed dwellings, which are smaller than typical best-practice unit sizes identified in the Apartment Design Guide (not strictly applicable), and whether the development maintains reasonable amenity for future occupants while also achieving the heritage conservation objectives of the RLEP.

The proposal complies with the 9.5m maximum height of buildings and 1:1 floor space ratio standard under the Randwick LEP 2012. The proposal also complies with the general requirements of Part D6 of the Randwick Comprehensive DCP for Neighbourhood Centres, which apply to E1 Local Centre zoned sites (noting it was previously labelled as Neighbourhood Centre zoned site).

An assessment of the application concludes that despite the relatively small unit sizes, the proposed dwellings will provide acceptable amenity providing for bedrooms with 3m minimum dimensions and living areas generally consistent with the ADG design controls and design guidance. Importantly, the alterations and additions to the heritage item are modest in scale, respect its heritage significance – reinstating an open balcony at the first-floor level fronting Clovelly Road improving its presentation along Clovelly Road, and will not result in adverse impacts on the surrounding area.

One submission was received raising concerns with the structural stability of the existing awning fronting Clovelly Road. Suitable conditions are included in the recommendation section of this report to ensure appropriate certification is provided to confirm the structural adequacy of this awning structure.

Overall, the development of these smaller units contributes to housing diversity by providing smaller, more affordable dwellings in a location well served by transport, shops and services, and represents a sustainable adaptive reuse of existing building heritage stock consistent with Council and State strategic planning objectives.

The proposal is recommended for approval subject to standard consent conditions.

2. Site Description and Locality

The subject site is known as 323 Clovelly Road, Randwick and is legally described as Lot 3 in DP 703219. The site is 154m², is regular in shape and has a 5.125m frontage to Clovelly Road to the south. The site contains a part-two part-one storey shop top housing building with the shop facing Clovelly Road and residential located above and also behind on ground level that sits around 3.5m above the lower ground level shop premises. The existing building is configured such that its eastern elevation shares a common wall with the eastern shop top building at No. 325 Clovelly Road and for the length of the shop shares a common wall with No. 321 Clovelly Road. Beyond the zero-lot alignment, the existing building has a side setback of between 1.068m and 954mm from the boundary with No. 321 Clovelly Road. A 2.7m deep right of carriageway is at the rear of the site providing access off Arden Street noting that no parking is currently provided on site.



Figure 1: Aerial view of the subject site and surrounding area.

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Figure 2: An oblique view of the subject site and surrounding area.



Figure 3: Street view of subject site – “laundrette” showing adjoining shop top housing premises part of a row of heritage items.



Figure 4: Street view of south western corner of Arden street and Clovelly Road looking eastward down Clovelly Road. The subject premises is three shops off the corner showing a projecting 'Laundry' wall sign at the first floor parapet.



Figure 5: Street view looking westward along Clovelly Road showing the subject site and projecting wall sign at first floor level parapet.

3. Relevant history

Property Applications: DA/676/1966, Approved self service laundry and dry cleaning business

Property Applications: BA/484/1966, Associated with the above DA.

Property Applications: CDC/17/2004, Replace existing shop awning.

4. Proposal

The proposal seeks development consent for alterations and additions to an existing mixed-use part one, part two storey building currently containing a ground floor shop with a two-bedroom dwelling above and behind. The proposal would reconfigure the residential component into two dwellings:

- A one-bedroom dwelling (46m²) above and behind the shop; and
- A two-bedroom dwelling over two levels (64m²) located behind the shop and above bedroom 1 of the one-bedroom dwelling.

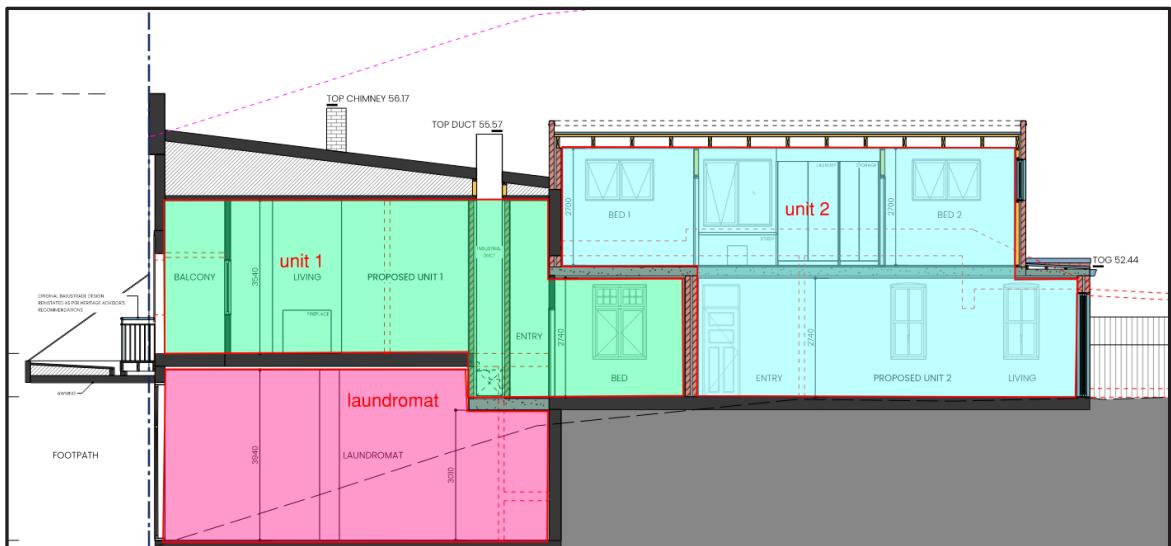


Figure 6: Proposed section plan showing laundromat (pink shaded), unit 1 (green shaded) and unit 2 (blue shaded).

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Figure 7: Existing southern elevation of building noting first floor level balcony is enclosed.



Figure 8: Southern elevation of the proposal, illustrating reinstatement of a first-floor balcony with balustrading configured to match that of No. 321 Clovelly Road.

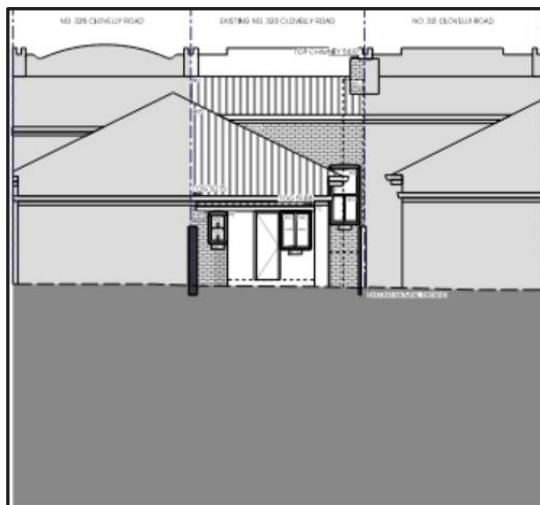


Figure 9: Existing rear elevation



Figure 10: Proposed rear elevation



Figure 11: Proposed western elevation. The red line indicates the outline of the existing building, with the rear section that extends beyond the proposed works to the left showing the rear shed proposed for demolition.

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:

- 321 & 325 Clovelly Road

Issue	Comment
The existing awning is common to the awnings of 319, 321 & 325 Clovelly Road. Water leaks through the existing sites awning and rods are rusted and its integrity along with the pylon signs supports are unknown. Request that as a condition of approval that an engineer's report be obtained relating to the awning and to comply with standards.	A suitable condition is included in the consent.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

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

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

The provisions of Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 require Council to consider the likelihood of previous contamination on the site and, where relevant, the need for remediation to ensure the land is suitable for the proposed use.

Historical records indicate that the shop premises at the front of the site has been used as a laundry since at least 1966 (BA/484/1966), with residential uses above and to the rear. Given the historical commercial laundry use, there is some potential for localised contamination.

A preliminary contamination assessment report has not been provided. However, a review of previous consents and plans indicates that:

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- The laundry use is confined to the front shop area where its current use is not changing, and all new works are located above this existing shopfront.
- The residential areas to the rear and upper levels — the parts of the site subject to the current proposal — were not used for potentially contaminating activities; and
- The proposed alterations and additions do not involve excavation or disturbance within the former laundry area (other than the removal of stairs).

On this basis, it is considered that the risk of contamination within the part of the site affected by the proposed works is low, however given the site does carry out a commercial use an unexpected finds protocol condition has been included ensuring the land is suitable for the proposed development without the need for further investigation or remediation.

Accordingly, the relevant provisions of Chapter 4 – Remediation of Land of the Resilience and Hazards SEPP are considered to be addressed noting the scope and location of the proposed works.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The objectives of E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.*
- *To support a diverse, safe and inclusive day and night-time economy.*

Assessment Against Zone Objectives:

The proposal supports the objective of providing varied residential dwellings within a local centre context. The reconfiguration of the upper-level residential accommodation into two smaller dwellings introduces additional housing choice and diversity, including a one-bedroom and a two-bedroom dwelling. While compact in size, the dwellings provide functional layouts and reasonable levels of amenity for future occupants. This is consistent with Council's strategic planning goals to broaden housing options in well-serviced locations.

The reinstatement of the first-floor balcony enhances the streetscape and contributes to the heritage conservation objectives of the zone. The works protect the significance of the heritage item while contributing to the collective character of the row of items in this stretch of Clovelly Road and the wider context of the Clovelly Road local centre.

The development is modest in scale, retaining a two-storey presentation that respects the existing built form along the street. The bulk and scale are compatible with adjoining development, including maintenance of existing side setbacks to the east at No. 321 Clovelly Road.

The proposal is consistent with the objective of minimising impacts and protecting amenity of residents in the development and the adjoining properties. The development maintains appropriate side and rear setbacks, ensures no unreasonable overshadowing or view loss, and has been designed to avoid adverse visual bulk, acoustic or privacy impacts.

The proposal reinforces the objective of encouraging active non-residential uses at street level and residential uses above and behind which is consistent with the desired character and function of local centres.

The Clovelly Local Centre is well connected to public transport and supported by a range of shops and services. The proposal generates some additional residential demand for on-street parking, this increase is expected to be minor noting the proposal results in one additional bedroom on site. It is important to consider also that the site is constrained in its capacity to provide any off-street parking and instead has opted to improve landscaping within the rear yard of the site, which has the effect of reducing the heat island effect. Importantly, a key objective of the LEP and the local centre framework is to encourage sustainable transport choices, including walking and cycling. In this context, the small lot sizes and compact form of the existing centre provide an opportunity to reducing reliance on private vehicles that fosters a more walkable, accessible centre.

The adaptive reuse of the existing building supports the objective of sustainable and efficient use of building stock, while promoting a safe and inclusive local centre environment. The addition of smaller dwellings within the centre is consistent with Council and State planning directions to support a diverse, safe and inclusive day and night-time economy.

Compliance with Development Standards (RLEP 2012)

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)	1:1	0.99:1	Yes
CI 4.3: Building height (max)	9.5m	8.06m (ceiling of unit 1 above underside of ground level slab.)	Yes

Conclusion

The proposal is consistent with the objectives of the E1 Local Centre zone. It protects and enhances the heritage character of the locality, contributes to housing diversity in a highly accessible location, maintains active street-level uses, and ensures that amenity impacts on surrounding properties are minimised. The development represents a positive outcome that aligns with the intent of the RLEP 2012 and broader strategic planning directions.

6.4.1. Clause 5.10 - Heritage conservation

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

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

The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties.

The proposed development was referred to Council's Heritage Planner for comment. Subject to relevant matters being addressed and suitable conditions being included the proposed development satisfies the relevant objectives under the LEP with regards to heritage conservation.

6.4.2. Clause 6.22: Development in Local Centres

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

- (a) *to ensure the scale and function of development in local centres are appropriate for the location,*
- (b) *to ensure development in local centres is compatible with the desired future character and amenity of surrounding residential areas.*

(2) *This clause applies to land in Zone E1 Local Centre.*

(3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered—*

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

Assessment against Clause 6.22

Amenity of surrounding residential areas:

The proposed development is considered to adequately protect the amenity of neighbouring properties. Key aspects include:

- Bulk and scale is generally consistent with the bulk and scale of adjoining development limited to two storey scale.
- Side setbacks remain consistent with the existing side setbacks provided on site ensuring no inadequate visual bulk
- The proposed window openings are not located opposite neighbours' windows
- The proposal does not contain any first floor balconies that would have any adverse overlooking on neighbouring properties
- Rear extent of the development is generally consistent with the predominant rear building line

Desired future character of the local centre:

The impact on the desired future character of the area will be acceptable for the following reasons:

- The development complies with the maximum building height and floor space ratio development standards achieving a scale that is consistent with the scale and character of the Local Centre.
- The proposal provides upgraded landscaping within the rear yard which will contribute to reducing the heat island effect and also providing for good amenity for future occupants of unit 2.
- The proposal reinstates a first-floor level balcony at the front which provides a reasonable area of private open space for occupants of unit 1 and achieves a better planning outcome in terms of achieving consistency with the objectives for heritage conservation.
- The proposal provides for housing choice and variety.
- The proposal maintains the commercial tenancy at the Clovelly Road frontage

Consistency with the hierarchy of centres:

- The scale, intensity, and density of the development is appropriate for the local Centre noting levels of compliance with the stated controls and objectives of the local Centre which is distinctly lower than the higher-order scale of development in a Town Centres.
- The proposal would satisfy strategic planning objectives for development in Local Centres.

Conclusion:

The proposed development is consistent with Clause 6.22 of RLEP 2012:

- It does not result in any unreasonable adverse impacts on the amenity of surrounding residential uses.
- It aligns with the desired future character of the local centre.
- It is consistent with the hierarchy of centres, representing a reasonable development of a site within a neighbourhood-level centre.

Accordingly, approval of the application is recommended in the public interest.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

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

8.1. Discussion of key issues

Heritage Considerations

The proposal involves alterations and additions to a heritage-listed commercial building at 323 Clovelly Road, including the demolition of a small rear shed, internal reconfiguration, and reinstatement of the first-floor balcony. Council's Heritage Planner supported the works, noting that the proposal is modest in scale, sympathetic to the building's original character, and enhances the streetscape by reinstating the traditional balcony form consistent with adjoining heritage properties. The works are considered to conserve the building's significance and meet the heritage objectives of Clause 5.10 of the Randwick Local Environmental Plan (LEP) and relevant Development Control Plan (DCP) provisions.

Dwelling Size and Amenity

The development proposes a one-bedroom and a two-bedroom dwelling above the existing commercial premises. Although the unit sizes (46m² and 64m² respectively) fall below the Apartment Design Guide's (ADG) typical minimum standards, the ADG does not strictly apply to this mixed-use building typology due to the being below combined criterion of less than 4 units and less than 3 storeys. The internal layouts are efficient and functional, providing reasonable access to daylight and ventilation. Both dwellings are afforded private open space, either by way of a balcony or a rear yard, directly accessible from the living areas. The less than minimum balcony depth to Unit 1 is considered acceptable as it maintains adequate internal living space and does not detract from the overall residential amenity of the dwelling.

Parking and Access

No on-site parking is proposed, resulting in a shortfall of approximately one space under Council's DCP requirements. This is considered acceptable given the site's physical constraints, including the narrow 2.6-metre-wide rear right of way, which is unsuitable for modern vehicles. The property is well located in proximity to public transport, local services, and car share facilities. The proposal aligns with Council's strategic intent to encourage reduced car dependence in accessible local centres. Council's Development Engineer raised no objections to the parking shortfall on this basis.

Structural Integrity of the Awning

A submission was received raising concerns regarding the structural integrity and water leaks from the existing awning along Clovelly Road. Although no works are proposed to this element, a condition of consent will require certification from a qualified structural engineer confirming the awning's safety and adequacy prior to occupation. This will ensure the structure complies with relevant safety standards and maintains pedestrian safety.

Contamination Risk

Given the site's historical use as a laundromat, the potential for contamination was considered. The new residential works are located above the ground floor and outside the area used for laundry operations. As no excavation or disturbance is proposed within the potentially affected zone, the risk of exposure or contamination is considered low. No further investigation is required in this regard, subject to recommended consent conditions.

Streetscape, Scale, and Built Form

The proposal retains the existing two-storey building form and active ground-floor commercial frontage, which is consistent with the established character of the local centre. The reinstated balcony and the use of neutral finishes will enhance the visual presentation of the building and reinforce the heritage streetscape along Clovelly Road. The proposed height of 8.06 metres and floor space ratio (FSR) of 0.99:1 comply with the development standards under the Randwick LEP. The design contributes positively to the E1 Local Centre zone objectives by promoting mixed-use development, maintaining commercial activity, and providing housing diversity in an accessible location.

Waste Management

Waste storage and collection arrangements have been satisfactorily addressed. The commercial tenancy will incorporate an internal waste room, while residential waste bins will be stored at the rear and presented via the right of way to Arden Street, consistent with existing practice. A detailed Waste Management Plan will be required prior to the issue of a construction certificate to ensure appropriate handling and collection procedures.

Public Interest

Overall, the proposal represents a sensitive and well-resolved adaptive reuse of a heritage building that maintains its historic character while providing modest housing opportunities in a sustainable location. The key issues of heritage conservation, dwelling amenity, parking shortfall, and structural safety have been adequately addressed through design refinements and consent conditions. The development achieves a balanced planning outcome consistent with the objectives of the Randwick LEP, DCP, and relevant strategic planning policies. It is therefore considered to be in the public interest and is recommended for approval, subject to standard and site-specific conditions.

9. Conclusion

That the application to carry out alterations and additions to existing mixed-use development including first floor addition (Heritage Item) be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the E1 Local Centre zone in that it maintains a commercial tenancy at ground level facing Clovelly Road, it enables residential development that contributes to a vibrant and active local centre.
- The proposal is of a bulk and scale that minimises the impact of development and protects the amenity of residents in the zone and in the adjoining and nearby residential zones.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape
- The proposed development will make a positive contribution to the Local centre

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

- *The subject site forms part of a heritage item, known as 'Commercial/residential group, "Walders Corner"' (Item no. 16) at 319–325 Clovelly Road, Clovelly under Schedule 5 of the RLEP 2012.*
- *The site is located in the vicinity of a heritage item, known as "Pohills Corner" at 317 Clovelly Road, Clovelly (Item no. 15).*

Proposal

Alterations and additions to an existing mixed-use development, including a new first floor addition.

Submission

- *D05860286 - *Full Set - DA Plans - 323 Clovelly Road Clovelly*
- *D05860287 - *Full Set - Shadow Diagrams - 323 Clovelly Road, Clovelly.pdf - DA 984 2025 - 323 Clovelly Road, CLOVELLY NSW 2031 - DEV*
- *D05920251 - Amended plans in response to heritage and planning matters - 323 Clovelly Road Clovelly - DA/984/2025 - Issue C_AI-1886653*
- *D05860283 - Heritage Impact Statement - 323 Clovelly Road Clovelly*
- *D05860279 - SEE - 323 Clovelly Road Clovelly*

Controls

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

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

The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties.

RFI comments

Following a heritage site inspection on 29 October 2025, an RFI was issued to clarify if the application includes a hardstand car space at the rear and awning repairs. Additionally, the following amendments to the architectural drawings were requested:

- *reinstatement of the fireplace in Unit 1*
- *identify the units separately in colour*
- *notes describing the restoration works proposed to the front façade (and awning, if included)*
- *the colour, materials and profile of the balustrade proposed to the balcony*
- *relocation of the laundry in Unit 1*
- *update the profile of window WP-2.4 similar to WP 2.2 or WP2.1*

Recommendation

The amended drawings address the issues raised in the RFI. The following conditions should be included in any consent:

Amended Plans & Documentation

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

- *Provide a notation indicating removal of the 'Laundry' sign above the awning.*
- *Replace the proposed balustrade colour to charcoal or similar, to match the balustrade at 321 Clovelly Road, Clovelly.*

- *Provide a balustrade specification/ sample to confirm profile and finish.*

The above requirements must be reflected in Construction Certificate documentation. Any amended plans/documentation, as required under this condition, must be submitted to and approved by Council's Heritage Planner and Coordinator Development Assessment prior to the release of any construction certificate.

General heritage works

- a) All development, conservation, and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- b) The proposed works are to be carried out in a manner that minimises demolition, alterations, and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- c) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- d) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- e) New work is to be separated from the old by an expansion joint.
- f) Existing mortar joints should be repointed if necessary using a soft mortar mix.
- g) The face brickwork must not be rendered, painted or coated.

Schedule of Conservation Works

A Schedule of Conservation Works for the existing buildings shall be prepared in accordance with the principles embodied in the Australia ICOMOS Burra Charter and the methodology outlined in J.S. Kerr's *The Conservation Plan*. This Plan shall be prepared by an architect suitably qualified and experienced in heritage conservation and shall be to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

Photographic Archival Documentation

A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture.

Each submission must include the following:

- A PDF copy of the archival record incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs; and
- Digital copies of the archival photographs in JPEG and TIFF formats.

1.2. Development Engineer

An application has been received for alterations and additions to existing mixed-use development including first floor addition (Heritage Item) at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by NDRSN Architects dated 15-09-2025;
- Statement of Environmental Effects by BMA Urban pty Ltd
- Detail & Level Survey by Jackson Surveyors Pty Ltd

General Comments

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

Parking Comments

Existing Situation

The site currently contains a mixed used development comprising of a commercial shop (laundrette) at ground level with the upper floors containing a 3-bedroom residence. The commercial shop and residence are connected by a set of stairs implying one tenancy/ownership for the whole building.

Under Part B7 of the DCP the commercial portion (approx. 40m) would generate a demand of 1 carspace while the 3-bedroom residence above would generate a demand for two spaces being a total for the site of 3 spaces. As the retail tenancy and dwelling would be commonly owned the existing parking demand would more likely be in the order of 2 spaces.

There is a Right of Carriageway servicing the site accessed through neighbouring properties to the west from Arden Street. The Right of Way is very narrow at only 2.59m wide (8 ½ ft) wide and would not be suitable for modern vehicles. A perusal of past aerial photography over the last 10-20 year also indicates the rear of the site fronting the Right of Way has not been used for car parking for quite some time.

Proposed Development

The proposal is for alterations and additions resulting in the provision of an additional dwelling. The commercial floor area is being retained but will no longer be connected to the dwelling above. The site will therefore comprise of

1 x commercial tenancy (43m²)

1 x 1-bedroom unit

1 x 2- bedroom unit

Under Part B7 of the DCP the proposed uses would now generate a parking demand of

1.1 space (commercial) + 1.0 space (1 bedroom unit) + 1.2 spaces (2-bedroom unit) being a total of 3.3 spaces

Sec 3.2 Part B7 of Council's DCP 2013 states:

"Where Development comprises an extension, modification or change of use to an existing development, Council will generally only require that additional parking be provided to cater for the additional demands arising from increases in floor space or changes in use"

Hence according to Part B7 of Council's DCP, the proposed development generates a demand for one additional parking space, which has not been accommodated in the design.

The existing Right of Way is only 2.59m (8½ ft) wide, making it unsuitable for modern vehicle access and posing safety risks to both pedestrians and drivers.

However, the parking shortfall has been considered in the context of the site's location, with the following points noted:

- *The site is well-serviced by public transport, with frequent bus routes (360, 339, and 350) accessible from nearby stops on Arden Street and Clovelly Road.*
- *Multiple GoGet car share pods are located nearby, including one just north of the Right of Way entrance on Arden Street, and others to the east and west within 270m on Clovelly Road.*

- *The site is part of a local commercial hub at the Arden Street–Clovelly Road intersection, which includes a barber, fish and chip shop, supermarket, real estate agency, bakery, café, gym, and accountant.*

Given the site's strong access to public transport, car share options, and local amenities, the parking shortfall is not considered sufficient grounds for refusal of the development in this instance.

Drainage Comments

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

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

Waste Management Comments

The commercial tenancy will no longer have pedestrian access to the rear yard or Right of Way and so must now store their waste within the tenancy itself. A new waste storage room must therefore be constructed within the tenancy itself. A suitable condition has been included in this report.

The 2 residential apartments will require a total of 3 x 240L bins comprising of 1 for garbage, 1 for recycling and 1 for FOGO. These bins will need to be wheeled down the Right of Way and presented on Arden Street for collection, which appears to be the current arrangement.

A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, will be required to be submitted to and approved by Council's Lead Specialist Strategic Waste prior to the issuing of a construction certificate.

Appendix 2: DCP Compliance Table**3.1 Section D6: Neighbourhood Centres**

DCP Clause	Control	Proposal	Compliance
2	Site planning		
2.3	Building heights		
	i) Where 12m height limit applies, development must not exceed 3 storeys (with exception of habitable roof space/partial floor). ii) Minimum 3.3m floor to ceiling height at ground floor and 2.7 at upper floors.	The proposal is two storeys in scale at any one point.	Yes
2.4.1	Front setback		
	i) Development on primary road, up to 9.5m in height: nil setback. ii) Development on primary road, above 9.5m in height: 2m setback. iii) Corner allotments: minimum 1.5m x 1.5m splay corner at all levels.	The proposal maintains the existing height along Clovelly Road and new works are located less than 9.5m above existing ground level.	Yes.
2.4.2.	Rear setback		
	i) Rear lane access: 1m minimum setback for car parking and ancillary buildings. ii) Maximum 6m height and 4.5m wall height for all ancillary buildings fronting laneways. iii) Ancillary buildings on laneways must have a mass and scale secondary to the primary dwelling on the allotment. iv) Any upper level must be contained within the roof form as an attic storey. v) Where there is no rear lane access and the site adjoins land in a residential zone, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the lesser.	No parking exists on site and none is provided. No ancillary buildings are proposed.	Yes
2.4.3	Side setback		
	i) Adjacent to business zone: nil setback. ii) Dwellings in business zone: refer Part C1 or C2 of DCP. iii) Adjacent to non-business zone: 3m for a minimum of 60% of lot depth.	The proposal does not alter the existing setbacks which are nil for the front and setbacks between 954mm and 1068mm from rear to front. The proposed first floor addition at the rear for units 2 first floor level is alongside properties in a business zone.	Yes.
3	Building design		
3.1	Façades		
	i) Where a development has two street frontages, each façade treatment	The existing enclosed balcony is sought to be removed to reinstate	Yes.

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> ii) must respond to the buildings in those streets. iii) Include shopfronts on side street frontages of corner sites to enhance the commercial potential of the space and minimise blank walls to the street front. iv) Facades should display proportions and detailing which respect the prevailing building facades across the centre (i.e. designing fine grain shop fronts, where the existing subdivision is fine grain). v) Distinguish residential entries from commercial/retail entries in the case of mixed use development. vi) Design shopfronts, including entries and windows, to reinforce any prevalent character in the centre. vii) All street frontage windows at ground level are to have clear glazing. Large, glazed shopfronts should be avoided, with window configurations broken into discrete sections to ensure visual interest. viii) All facade elements must be contained within the site boundaries. ix) Building services, such as drainage pipes shall be coordinated and integrated with overall facade and balcony design. x) Balconies to the street facade are to be recessed behind the principal building facade. xi) Balcony balustrades should comprise a light open/glazed material and should be compatible with the style of the building. xi) The development of colonnades is discouraged. 	<p>the pre-existing first floor balcony which will ensure consistency with the prevailing buildings facades across this stretch of buildings.</p> <p>No works are proposed to the shopfront.</p>	
3.2	Roof Forms		
	<ul style="list-style-type: none"> i) In centres where parapet forms are prevalent, development should include parapets that reflect the rhythm, scale and detailing of existing parapets. ii) Provide flat roofs where these prevail across the centre, unless the site conditions justify an alternative roof form (e.g. Corner sites). iii) Design roof forms to generate a visually interesting skyline, while minimising apparent bulk and potential for overshadowing. The style and pitch of new roofs should relate sympathetically to neighbouring buildings. iv) Relate roof forms to the size and scale of the building, the building 	<p>Parapet roof at front is maintained.</p> <p>Flat roof is proposed for the rear additions.</p> <p>Ventilation shaft is setback from the front alignment.</p>	Yes

DCP Clause	Control	Proposal	Compliance
	v) elevation and the three dimensional building form. Structures such as ventilation shafts, lift over-runs and service plants, should be wholly contained within roof structures and not project above the roof line.		
3.3	Awnings		
	i) Provide continuous street frontage awnings to all new development. ii) Generally awnings should be a minimum 3 metres deep and setback a minimum 600mm from the kerb. iii) Design new awnings to be complementary with their neighbours and aligned with the general alignment of existing awnings in the street. iv) Cantilever awnings from the building must have a minimum soffit height of 3.5metres. v) Provide under awning lighting to improve public safety. vi) Colonnades along the street edge are inappropriate. vii) Canvas blinds along the street edge may be suitable where they would assist in sun access/protection. viii) Signage on canvas blinds is inappropriate. ix) Ensure all awnings are structurally sound and safe and comply with relevant BCA requirements.	Continuous awning exists across several properties. A submission has been received calling into questions the structural adequacy of this awning along with a pylon sign. Whilst no changes are proposed to the awning a condition is included requiring that it be certified as structurally adequate.	Yes and subject to conditions.
3.4	Colours, materials, and finishes		
	i) Utilise high quality and durable materials and finishes which require minimal maintenance. ii) Combine different materials and finishes to assist building articulation and modulation. iii) The following materials are considered incompatible: large wall tiles; rough textured render and/or bagged finish; curtain walls; and highly reflective or mirror glass. iv) Avoid large expanses of any single material to facades. v) Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.	Colours and materials are neutral.	Yes
3.6	Signage		
	i) The location, size and design of signage must integrate with the architectural detail of the building and act as a unifying element to the neighbourhood centre.	No signage changes provided. Noting heritage planners requires the removal of the above awning sign.	Yes

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> ii) Signage must not: obscure important architectural features; dominate the architecture of buildings; protrude from, or stand proud of, the awnings; project above any part of the building to which it is attached; cover a large portion of the building façade. iii) Avoid fin signs, signage on canvas blinds, signage on roller shutters and projecting wall signs and large elevated solid panel business and building name signs including those fixed on parapets or roofs. iv) Ensure that signs provide clear identification of premises for residents, visitors and customers. v) All premises must display a street number. The height of these numbers should be legible but not a dominating feature, and no less than 300mm presented in a clear readable font. vi) Signage must relate to the business being carried out on the property. vii) Early building names (on parapets, pediments, etc) should be preserved wherever possible. viii) Any signage structure or sign must have regard to the impact on residential occupants in terms of illumination and visual impact. 		
4	Public domain		
4.1	Active frontages		
	<ul style="list-style-type: none"> i) Maximise street level activity and minimise opaque or blank walls at ground level. ii) Minimise vehicular entrances not associated with active uses or building entries. iii) Security grilles or shutters may be fitted only within the shop itself behind glazing and must offer a minimum of 70% transparency. iv) Doors shall not encroach over the footpath when open. The use of fully operable glass walls or windows to open cafés and restaurants to the street is encouraged, where suitable for the prevailing character of existing buildings in the centre. v) ATMs and takeaway service counters should be recessed within a building wall to avoid negative impact on footpaths being used as service/queuing space. These areas are to be designed to avoid a hidden alcove/niche 	Active commercial premises maintained. NA	
4.2	Pedestrian friendly access and spaces		

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> i) Development should aim to increase the area of public spaces and pedestrian links that are available in the business centres. ii) In designing such areas, consideration should be given to solar access and protection from wind and rain. iii) Pedestrian and vehicle accessways are to be separated and clearly distinguishable. iv) Pedestrian areas should minimise any changes in levels and allow wheelchair access to the shops from the car parking area and public footpaths. v) Consider artworks and design which integrates private development with the public domain. e.g. Window treatments, paving, sculptures and decorative elements. 	Residential entrance from the rear ROW.	Yes
4.4	Loading areas		
	<ul style="list-style-type: none"> i) Provide for loading facilities on site wherever feasible or demonstrate that suitable alternative arrangements to minimise impact on other premises and people within the centre. ii) Service/delivery areas are to be located to minimise conflict between pedestrians/cyclists and vehicles and to minimise impact on residential amenity of neighbouring properties. iii) Where new development has access available off rear laneways or side streets, loading areas shall be located off these areas. 	Existing loading at front of shop premises along Clovelly Road.	NA
5	Amenity		
5.1	Solar Access		
	<ul style="list-style-type: none"> i) Commercial and mixed use development are not to reduce sunlight to adjacent dwellings below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 8am and 4pm on 21 June. ii) Where adjacent dwellings and their open space already receive less than the standard hours of sun, new development should seek to maintain this solar access where practicable. 	Solar access maintained to north facing windows. Some additional shadowing of glass block windows of western neighbours however these are along shallow side setbacks and maintained solar to these windows would unreasonably hinder orderly development of land.	Yes
5.2	Acoustic and visual privacy		
	<ul style="list-style-type: none"> i) Developments are to be designed to minimise noise transmission by: 	Noisy areas such as bathrooms and kitchens are located over each other. The	Yes

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> Locating busy noisy areas next to each other and quieter areas next to each other; Locating bedrooms away from busy roads and other noise sources; Using storage or circulation areas within a dwelling to buffer noise from adjacent apartments, mechanical services or corridors/lobbies. Avoid locating wet areas, such as toilets, laundries and kitchens, adjacent to bedrooms of adjoining dwellings. <p>ii) Locate exhaust vents away from windows and open space of dwellings.</p> <p>iii) For development fronting arterial roads, provide noise mitigation measures to ensure an acceptable level of living amenity for the dwellings is maintained.</p> <p>iv) Operating hours must be submitted with the DA. Should the development require deliveries and/or operation of machinery outside of standard hours (7.30am to 5pm, Monday to Friday), an acoustic report must accompany the DA. The acoustic report must be prepared by a suitably qualified acoustic consultant.</p>	relocated ventilation shaft for the laundromat is located adjacent to unit 1 access stairs (encased within service riser) and the applicant submits that suitable acoustic amenity will be provided for the occupants of unit 1.	
6	Shop top housing		
	<p>i) Entries to residential apartments are to be separated from commercial entries to provide security and an identifiable address for each of the different users.</p> <p>ii) Each dwelling must be provided with private open space directly accessible from its living area, in the form of either a balcony at least 2m deep or a terrace or private courtyard at least 10 square metres in area.</p> <p>iii) Private open spaces should be: located adjacent to and accessible from the main living areas of the dwelling; located so as to maximise solar access; located to ensure privacy and away from noisy locations, where possible; and screened by vegetation or a wall to ensure privacy.</p> <p>iv) If an elevator is provided for residential use, it must not be used for retail loading or waste removal.</p>	<p>Separate entries for commercial and residential components are being provided.</p> <p>Each dwelling has an area of POS. Whilst unit 1 POS is less than 2m depth it is considered appropriate and requiring a larger depth would unnecessarily reduce the area of the units living space without any appreciable benefit and will ensure alignment with the existing heritage façade.</p> <p>All POS is accessible off living rooms.</p> <p>See waste comments by Development Engineer.</p>	Partial compliance.

DCP Clause	Control	Proposal	Compliance
	v) Separate the waste storage facilities for commercial and residential components of a development. vi) Site services and facilities (such as letterboxes and drying yards) should be designed to enable safe and convenient access by residents; in an aesthetically sensitive way; to have regard to the amenity of adjoining developments and streetscape; to require minimal maintenance; and to be visually integrated with the development.	Separate waste is provided for commercial and residential components.	
6.1	Neighbourhood shops and business uses in Residential Zones		
	i) Preserve glazed shopfronts (i.e. do not infill), awnings and primary wall heights at the street front. ii) A Noise Impact Assessment prepared by a qualified acoustic consultant may be required depending on the use, scale and location of a development to demonstrate that the use can suitably operate within a residential area.	No change.	NA

B6 Recycling and Waste Management

DCP Clause	Control		Compliance
4.	On-Going Operation		
	(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.	At rear for pick up off the side street.	Yes
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.	At rear	Yes
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.	At rear not visible from public domain.	Yes
	(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).	Within the shop premises	Condition included.

DCP Clause	Control		Compliance
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.	Sufficient space is provided within each dwelling usually under kitchen counter.	Yes
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.		NA.
B7	Transport, Traffic, Parking and Access		
3.	Parking & Service Delivery Requirements		
	Car parking requirements: 1 space per 2 studios 1 space per 1-bedroom unit (over 40m ²) 1.2 spaces per 2-bedroom unit 1.5 spaces per 3- or more bedroom unit 1 visitor space per 4 dwellings	No parking provided.	See development engineer's comments

Responsible officer: Louis Coorey, Senior Environmental Planning Officer

File Reference: DA/984/2025

D71/25

Draft Development Consent Conditions (Mixed use)



Folder /DA No:	DA/984/2025
Property:	323 Clovelly Road, CLOVELLY NSW 2031
Proposal:	Alterations and additions to existing mixed-use development including first floor addition (Heritage Item).
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 (including any deferred commencement conditions):

Plan	Drawn by	Dated	Received by Council
DA 0.1 Rev C	/NDRSN	14.10.25	6 November 2025
DA.1.1 Rev B	/NDRSN	14.10.25	6 November 2025
DA.1.2 Rev C	/NDRSN	14.10.25	6 November 2025
DA 1.3 Rev B	/NDRSN	14.10.25	6 November 2025
DA.3.1 Rev C	/NDRSN	14.10.25	6 November 2025
DA.3.2 Rev C	/NDRSN	14.10.25	6 November 2025
DA 3.3 Rev C	/NDRSN	14.10.25	6 November 2025
DA.3.4 Rev C	/NDRSN	14.10.25	6 November 2025
DA.3.5 Rev C	/NDRSN	14.10.25	6 November 2025
DA 3.6 Rev C	/NDRSN	14.10.25	6 November 2025
DA 4.1 Rev C	/NDRSN	14.10.25	6 November 2025
DA.5.1 Rev C	/NDRSN	14.10.25	6 November 2025

BASIX Certificate No.	Dated	Received by Council
A1801497_02	16 July 2025	17 September 2025
A1801499_02	16 July 2025	17 September 2025

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

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

2.

Amendment of Plans & Documentation

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

- Provide a notation indicating removal of the 'Laundry' sign above the awning.
- Replace the proposed balustrade colour to charcoal or similar, to match the balustrade at 321 Clovelly Road, Clovelly.
- Provide a balustrade specification/ sample to confirm profile and finish.

The above requirements must be reflected in Construction Certificate documentation. Any amended plans/documentation, as required under this condition, must be submitted to and approved by Council's Heritage Planner and Coordinator Development Assessment prior to the release of any construction certificate.

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

3.

General heritage works

- a) All development, conservation, and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- b) The proposed works are to be carried out in a manner that minimises demolition, alterations, and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- c) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- d) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- e) New work is to be separated from the old by an expansion joint.
- f) Existing mortar joints should be repointed if necessary using a soft mortar mix.
- g) The face brickwork must not be rendered, painted or coated.

Condition Reason: To ensure works are undertaken in accordance with recognised heritage conservation principles, retain significant fabric, and protect the heritage values and structural integrity of the item during construction.

4.

Schedule of Conservation Works

A Schedule of Conservation Works for the existing buildings shall be prepared in accordance with the principles embodied in the Australia ICOMOS Burra Charter and the methodology outlined in J.S. Kerr's The Conservation Plan. This Plan shall be prepared by an architect suitably qualified and experienced in heritage conservation and shall be to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

Condition Reason: To ensure conservation works are planned and executed in accordance with accepted heritage practice and approved by Council prior to construction.

5.

Photographic Archival Documentation

A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture.

Each submission must include the following:

- A PDF copy of the archival record incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs; and
- Digital copies of the archival photographs in JPEG and TIFF formats.

Condition Reason: To provide a permanent record of the heritage item's condition and features before works commence, in accordance with recognised heritage documentation standards.

BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
6.	<p>Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
7.	<p>Section 7.12 Development Contributions Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$492,800.00 the following applicable monetary levy must be paid to Council: \$4,928.00.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> <p style="text-align: center;">IDC = ODC x CP2/CP1</p> <p>Where: IDC = the indexed development cost ODC = the original development cost determined by the Council CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</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>

8.

Long Service Levy Payments

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 *Environmental Planning and Assessment Act 1979*.

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.

Condition Reason: To ensure the long service levy is paid.

9.

Security Deposits

The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making

Condition
good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i> :
<ul style="list-style-type: none">• \$2000.00 - Damage / Civil Works Security Deposit
Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.
The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.
Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.
10. Housing and Productivity Contribution Before the issue of the first Construction Certificate, the housing and productivity contribution (HPC) set out in the table below is required to be made.

Housing and productivity contribution	Amount
Housing and productivity contribution (base component)	\$10,493.11
Total housing and productivity contribution	\$10,493.11

The HPC must be paid using the NSW planning portal.

At the time of payment, the amount of the HPC is to be adjusted in accordance with the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order)*.

The HPC may be made wholly or partly as a non-monetary contribution (apart from any transport project component) if the Minister administering the Environmental Planning and Assessment Act 1979 agrees.

The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the HPC Order exempts the development from the contribution.

The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025.

Condition Reason: To require contributions towards the provision of regional infrastructure, and to ensure the housing and productivity contribution is paid.

11. Sydney Water
All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

Condition

The Tap in™ service provides 24/7 access to a range of services, including:

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

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

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

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

12.

Building Code of Australia

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

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

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

13.

Building Code of Australia

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.

Condition Reason: To ensure safe and easy access to the premises for people with a disability.

14.

BASIX Requirements

In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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.

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.

	Condition
	<p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
15.	<p>Site stability, Excavation and Construction work 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>
16.	<p>Stormwater Drainage Surface water runoff from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:</p> <ul style="list-style-type: none">a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);b) The surface water/stormwater is to be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.
	<p>Condition Reason: To control and manage stormwater run-off so as not to</p>

Condition	
adversely impact neighbouring properties and Council's stormwater assets.	
17.	<p>Waste Management</p> <p>A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Lead Specialist Strategic Waste.</p> <p>The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):</p> <ul style="list-style-type: none"> • The use of the premises and the number and size of occupancies. • The type and quantity of waste to be generated by the development. • Demolition and construction waste, including materials to be re-used or recycled. • Details of the proposed recycling and waste disposal contractors. • Waste storage facilities and equipment. • Access and traffic arrangements. • The procedures and arrangements for on-going waste management of the dwellings and Commercial tenancy including collection, storage and removal of waste and recycling of materials. <p>Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at; https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf</p> <p>Condition Reason: To ensure the development effectively manages its waste during construction and operational phases.</p>
18.	<p>Waste Management</p> <p>A new fully enclosed waste bin room/storage area must be provided at the rear of the commercial floor tenancy and shall be large enough to accommodate a minimum of 3 x 240l bins or as otherwise specified by Council's Lead Specialist of Strategic Waste.</p> <p>Condition Reason: To ensure adequate waste management for the life of the development.</p>
19.	<p>Waste Management</p> <p>The new commercial waste storage area is 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 development</p>
20.	<p>Waste Management</p> <p>The residential waste storage area shall be sized to contain a total of 3 x 240 litre bins (comprising 1 garbage bin, 1 recycling bin & 1 FOGO bin) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.</p> <p>Condition Reason: To ensure adequate waste management for the life of the development</p>

BEFORE BUILDING WORK COMMENCES

Condition	
21.	Building Certification & Associated Requirements

Condition
The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):
a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> . A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and
c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i> , and the Principal Certifier and Council must be notified accordingly (in writing); and
d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and
e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

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

22.

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.

23.

Dilapidation Reports

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

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

Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is

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Condition	
	completed and ensure neighbours and council are provided with the dilapidation report.
24.	<p>Construction Noise & Vibration Management Plan 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 <i>Construction Noise & Vibration Management Plan</i> 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>
25.	<p>Construction Site Management Plan A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures

Condition
<ul style="list-style-type: none">• site access location and construction• methods of disposal of demolition materials• location and size of waste containers/bulk bins• provisions for temporary stormwater drainage• construction noise and vibration management• construction traffic management details• provisions for temporary sanitary facilities• measures to be implemented to ensure public health and safety.

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

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

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

26.

Construction Site Management Plan

A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

27.

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.

Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.

28.

Public Utilities

A Public Utility Impact Assessment must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.

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

29.

Public Utilities

The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

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

DURING BUILDING WORK

Condition
30. Site Signage

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

31.

Restriction on Working Hours

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

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

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

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

32.

Noise & Vibration

Condition	
	Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the <i>Construction Noise & Vibration Management Plan</i> , prepared for the development and as specified in the conditions of consent.
	Condition Reason: To protect the amenity of the neighbourhood during construction.
33.	<p>Construction Site Management</p> <p>Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:</p> <ul style="list-style-type: none">(a) 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.(b) 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.(c) 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.(d) Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.(e) 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.(f) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

Notes:

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

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

34. **Unexpected Finds and Remediation of Contaminated Soil**

If, during any excavation, demolition, or construction works, contaminated or potentially contaminated soil, fill, groundwater, or odorous material is encountered that was not previously identified, all work in the affected area must cease immediately, and the material must be managed in accordance with an Unexpected Finds Protocol prepared by a suitably qualified and experienced contaminated land consultant.

The protocol shall include procedures for:

- Immediate cessation of work in the affected area;
- Notification of the Principal Certifier and Council;
- Assessment and classification of the material in accordance with the EPA Guidelines for the NSW Site Auditor Scheme (2020) and the Contaminated

Condition
<p>Land Management Act 1997;</p> <ul style="list-style-type: none"> • Implementation of appropriate remediation, containment, or disposal measures. • Validation sampling and reporting to confirm that the affected area has been remediated and is suitable for its intended use. <p>Where remediation is required, all works must be carried out in accordance with a Remedial Action Plan (RAP) prepared and certified by a suitably qualified environmental consultant and, where necessary, reviewed by an EPA-accredited site auditor.</p> <p>A Validation Report must be submitted to the Principal Certifier and Council prior to the issue of an Occupation Certificate, certifying that:</p> <ul style="list-style-type: none"> • All remediation works have been completed in accordance with the RAP; • The site is safe and suitable for the approved use; and • All contaminated material has been managed, classified, transported, and disposed of at a facility lawfully permitted to accept such waste in accordance with the Protection of the Environment Operations (Waste) Regulation 2014 and the NSW EPA Waste Classification Guidelines (2022). <p>Records of waste classification, transport, and disposal (including waste dockets) must be retained and made available to Council or the EPA upon request.</p> <p>Condition Reason: To ensure that any unexpected contamination encountered during construction is appropriately identified, assessed, remediated, and validated in accordance with relevant environmental legislation and guidelines, thereby protecting human health, the environment, and future occupants of the site.</p>
35. Overhead Hoardings An overhead ('B' class) type hoarding is required to be provided to protect the public (unless otherwise approved by Council) if:
<ul style="list-style-type: none"> • goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian footway • building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment • it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or adjoining land • as may otherwise be required by SafeWork NSW, Council or the Principal Certifier. <p>Condition Reason: To ensure proper management of public land and ensure public safety during site works and construction.</p>
36. 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:
<ul style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.

Condition
d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

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

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

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

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

37.

Dust Control

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

Dust control measures and practices may include:

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- *Installation of water sprinkling system or provision hoses or the like.*
- *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*

Condition	
	<ul style="list-style-type: none"> • <i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i> • <i>Landscaping and revegetation of disturbed areas.</i>
	Condition Reason: To require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.
38.	<p>Site Accessway A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover.</p> <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>
39.	<p>Excavations and Support of Adjoining Land In 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>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
40.	<p>Complaints Register A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.</p> <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>
41.	<p>Building Encroachments 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>
42.	<p>Survey Report A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</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,

Condition
<ul style="list-style-type: none">• prior to issuing an Occupation Certificate, and• as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.

Condition Reason: To ensure compliance with approved plans.

43.

Road / Asset Opening Permit

A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.

For further information, and access to the Asset Opening Permit application form please visit Councils website at

<https://www.randwick.nsw.gov.au/services/roads/road-and-footpath-excavations>

or ring the call centre on 1300 722 542

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
<p>44. Occupation Certificate Requirements An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
<p>45. BASIX Requirements In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</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>46. Post-construction Dilapidation Report 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>

Condition
<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.

The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.

Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.

47.

Fire Safety Certificate

A single and complete *Fire Safety Certificate*, 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 *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy of the *Fire Safety Certificate* and *Fire Safety Schedule* must also be forwarded to Fire and Rescue NSW.

Condition Reason: Statutory requirement. To ensure compliance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, and that adequate provision is made for fire safety in the premises for building occupant safety.

48.

Structural Certification

A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council.

Condition Reason: To ensure the structural adequacy of the building and works.

49.

Sydney Water Certification

A *Section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > *Building and developing > Developing your Land > Water Servicing Coordinator* or telephone 13 20 92.

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.

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.

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

Condition	
50.	<p>Noise Control Requirements & Certification The use and operation of the development (including 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 <i>Regulations</i>.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
51.	<p>Noise Control Requirements & Certification A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from the development (and plant and equipment) satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i>, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent.</p> <p>A copy of the report must be provided to the <i>Principal Certifier</i> and Council prior to an occupation certificate being issued.</p> <p>Condition Reason: To protect the amenity of the surrounding area and residents.</p>
52.	<p>Structural adequacy of awning over footpath A report is required to be obtained from a professional structural engineer, which assesses and reports on the structural adequacy of the awning located over the footway and attached to the subject premises.</p> <p>The report is required to:</p> <ul style="list-style-type: none">(a) Confirm that the subject awning is currently structurally adequate and fit-for-purpose including stormwater connectivity, or;(b) Detail the necessary works required to be carried out to ensure that the awning is structurally adequate safe. <p>In the case of a report provided in accordance with a) above, the report must be provided to the Principal Certifier and Council prior to the issuing of an Occupation Certificate or commencement of the use (whichever the sooner).</p> <p>In the case of a report provided in accordance with b) above, the necessary works identified in the report must be carried out and a further report or certificate must be provided to the Principal Certifier and Council which confirms that the necessary work has been carried out and the subject awning is structurally adequate and fit-for-purpose, prior to the issuing of an Occupation Certificate or commencement of the use of the land (whichever the sooner) or other timeframe approved by Council in writing.</p> <p>Condition Reason: To protect pedestrians and footpath users, and ensure the awning is structurally sound.</p>
53.	<p>Street and/or Sub-Address Numbering Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.</p> <p>If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.</p> <p><i>Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.</i></p>

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Condition	
	Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.
54.	<p>Council's Infrastructure, Vehicular Crossings, street verge The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>
55.	<p>Council's Infrastructure, Vehicular Crossings, street verge 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 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval. The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing. <p>Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>

OCCUPATION AND ONGOING USE

Condition	
56.	<p>Fire Safety Statement 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>

Condition	
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.	
57.	External Lighting 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. Condition reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
58.	Demolition Work A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements: 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.

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.

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.

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.

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.

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

DURING DEMOLITION WORK

Condition
<p>59. 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 <i>demolition work plan</i>, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the <i>Protection of the Environment Operations Act 1997</i> 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. <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D72/25

Subject: 73 Darley Road, RANDWICK (DA/165/2023/B)

Executive Summary

Proposal:	Section 4.55 (2) - Modification to the approved development including minor changes to windows, materiality of roof form, and adjustments to the secondary dwelling design condition 2f planter beds
Ward:	North Ward
Applicant:	C Mullaney
Owner:	Mr D Griffiths & Mrs M Griffiths
Cost of works:	\$3,987,709.00
Reason for referral:	It is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a conditions previously recommended to and amended by the Panel

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/165/2023/B for Modification to the approved development including minor changes to windows, materiality of roof form, and adjustments to the secondary dwelling design condition 2f planter beds at No. 73 Darley Road, Randwick in the following manner:

- **Amend Condition 1 to read:**

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Site Plan, DA-A01, Rev B	Muci Architects	12/09/2023	06/11/2023
Demolition Plans, DA-A04, Rev B	Muci Architects	12/09/2023	06/11/2023
Reflected Ceiling Plans, DA-A06, Rev B	Muci Architects	12/09/2023	06/11/2023
Ground & First Floor Plan, DA-D01, Rev B	Muci Architects	12/09/2023	06/11/2023
Roof Plan & BASIX Commitments, DA-D02, Rev B	Muci Architects	12/09/2023	06/11/2023
Elevations, DA-E01, Rev B	Muci Architects	12/09/2023	06/11/2023
Sections, DA-F01, Rev B	Muci Architects	12/09/2023	06/11/2023

BASIX Certificate No.	Dated	Received by Council
A472664_02	12 September 2023	06 November 2023

EXCEPT where amended by:

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

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Plan	Drawn by	Dated	Received by Council
Site Plan A01 Rev C	Muci Architects	5 July 2024	10 September 2024
Demolition Plans A04 Rev C	Muci Architects	5 July 2024	10 September 2024
Reflective Ceiling Plans A06 Rev C	Muci Architects	5 July 2024	10 September 2024
Ground and First Floor Plan D01 Rev C	Muci Architects	5 July 2024	10 September 2024
Roof Plan and BASIX Commitments D02 Rev C	Muci Architects	5 July 2024	10 September 2024
Elevations E01 Rev C	Muci Architects	5 July 2024	10 September 2024
Sections F01 Rev C	Muci Architects	5 July 2024	10 September 2024

BASIX Certificate No.	Dated	Received by Council
1336595S_02	5 July 2024	Christopher Mullaney
A472664_03	5 July 2024	Christopher Mullaney

EXCEPT where amended by:

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

Plan	Drawn by	Dated	Received by Council
Site Plan DA-A01 Rev E	Muci Architects	3/09/2025	22/10/2025
Ground and First Floor Plan DA-D01 Rev E	Muci Architects	3/09/2025	22/10/2025
Roof Plan DA-D02 Rev E	Muci Architects	3/09/2025	22/10/2025
Elevations DA-E01 Rev E	Muci Architects	3/09/2025	22/10/2025
Sections DA-F01 Rev E	Muci Architects	3/09/2025	22/10/2025
DA-M01 Rev E	Muci Architects	3/09/2025	22/10/2025

BASIX Certificate No.	Dated	Received by Council
A472664_04	8/09/2025	22/10/2025
1336595_04	8/09/2025	22/10/2025

- **Delete Condition 2 (f):**

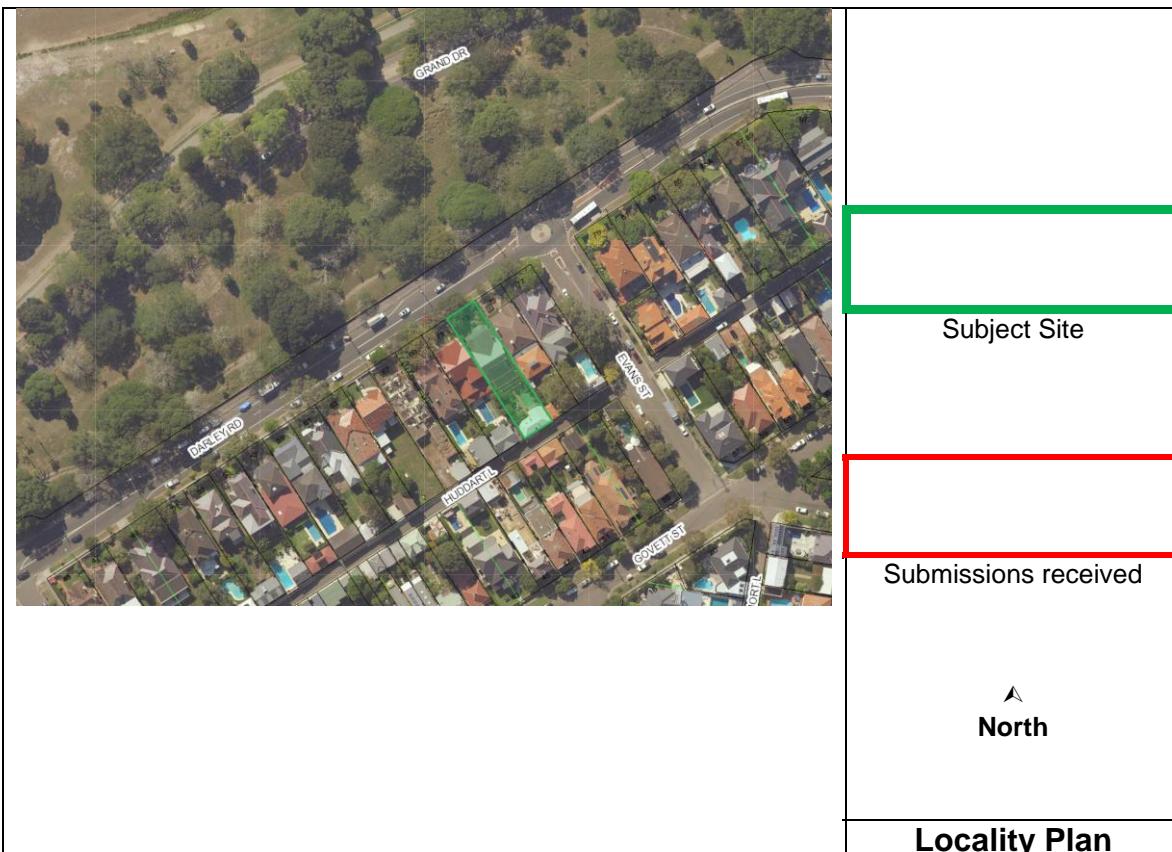
Amendment of Plans & Documentation

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

The roof of the pedestrian accessway along the north-eastern side of the rear building (including the planter section and rear wall/gate section) shall be deleted. Accordingly, a pedestrian gate and the solid wall shall be retained along the rear boundary and the north-eastern side boundary to a height matching the gutter height of the carport at 75 Darley Road.

Attachment/s:

Nil



1. Reason for referral

This report will assess DA/165/2023 (*the Modification*) for 73 Darley Road, Randwick (*the Subject Site*) against the relevant heads of consideration under Section 4.55(2) of *Environmental Planning and Assessment Act 1979* (*the Act*).

This Modification is referred to the Randwick Local Planning Panel (*RLPP*) as it is made under Section 4.55(2) of the Act and seeks to modify a condition previously recommended to and amended by the Panel and because the site is a Local Heritage Item (I341).

DA/165/2023 was referred to the RLPP because the Subject Site is a Local Heritage Item.

DA165/2023/A was referred to the RLPP because the Subject Site is a Local Heritage Item, and it sought to amend conditions imposed by the RLPP.

2. Site Description and Locality

The site is identified as Lot 16, Sect 24, DP 4589, No. 73 Darley Road, Randwick NSW 2031. The site is located on the south-eastern side of Darley Road between Evans Street to the north-east and Govett Street to the south-west.

The site is a rectangular shaped allotment with a 12.19m frontage to Darley Road, a 54.86m side boundary depth, a 12.19m rear boundary fronting Huddart Lane and a total site area of 663.9m².

Existing on site is a part one part two storey residential dwelling, with the first floor being contained within the dwelling roof cavity. Within the rear yard of the site is a swimming pool along the north-eastern boundary and a garden area to the south-western side.

At the rear of the site adjoining the rear boundary to Huddart Lane is a part one part two storey structure with a double width garage and pavilion to the ground floor and storeroom at the first floor.

The site is listed as a Heritage Item under Schedule 5 of RLEP 2012 (Item I341). The site is situated within the North Randwick Heritage Conservation Area (Item C1 within Part 2, Schedule 5 of RLEP 2012).

The surrounding area is characterised by residential development, including dwelling houses and semi-detached dwellings. Adjoining the site to the north east at 75 Darley Road is a single storey detached dwelling house and to the south-west at 71 Darley Road is a part one part two storey detached Local Heritage Item dwelling house. On the opposite side of Darley Road to the north is Centennial Parklands.

3. Details of Current Approval

DA/165/2023 was referred to the RLPP because the Subject Site is a Local Heritage Item. The following was approved:

“Alterations and additions to existing two storey detached dwelling including demolition of internal and external elements of the dwelling, swimming pool, and garage structure; extension of the ground and first floors and associated internal works, construction of new triple garage with a Secondary Dwelling above fronting Huddart Lane; addition of a new swimming pool, associated landscaping and site works (Heritage Item and Heritage Conservation Area).”



Figure 1 – DA/165/2023 – Approved site plan (source: DA/165/2023)

DA/165/2023/A was referred to the RLPP because the Subject Site is a Local Heritage Item, and it sought to amend conditions imposed by the RLPP. It approved *“minor changes to internal configurations, updated privacy screen details at first floor, modifications to the front path (non-original), relocation of the proposed pool, and adjustments to the secondary dwelling design.”*

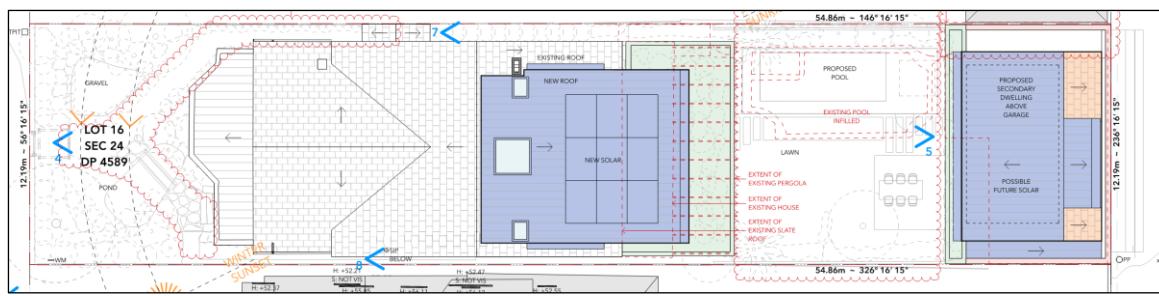


Figure 2 – DA/165/2023/A – Approved site plan (source: DA/165/2023/A)

4. Proposal

The Modification seeks the following amendments to DA/165/2023 (as amended):

- Modify the approved drawings under Condition 1 to:
 - Amend window and door materials from Timber to become Aluminum for W01, W02, W03, W04, W05, W101, W102, D02, D03; and
 - Amend secondary dwelling roof materials from slate to aluminum in Bronze Colour.
- Delete Condition 2 f).
 - f. *The roof of the pedestrian accessway along the north-eastern side of the rear building (including the planter section and rear wall/gate section) shall be deleted. Accordingly, a*

pedestrian gate and the solid wall shall be retained along the rear boundary and the north-eastern side boundary to a height matching the gutter height of the carport at 75 Darley Road.

The Applicant's SEE identifies modification of Condition 2 f).

While under assessment the Applicant entered into discussion with Council and resolved to instead propose deletion of Condition 2 f) as the submitted drawings essentially satisfy it with the exception of the planter bed.

The below **Figures** demonstrate the approval under DA/165/2023, which was to be modified by Condition 2 f).

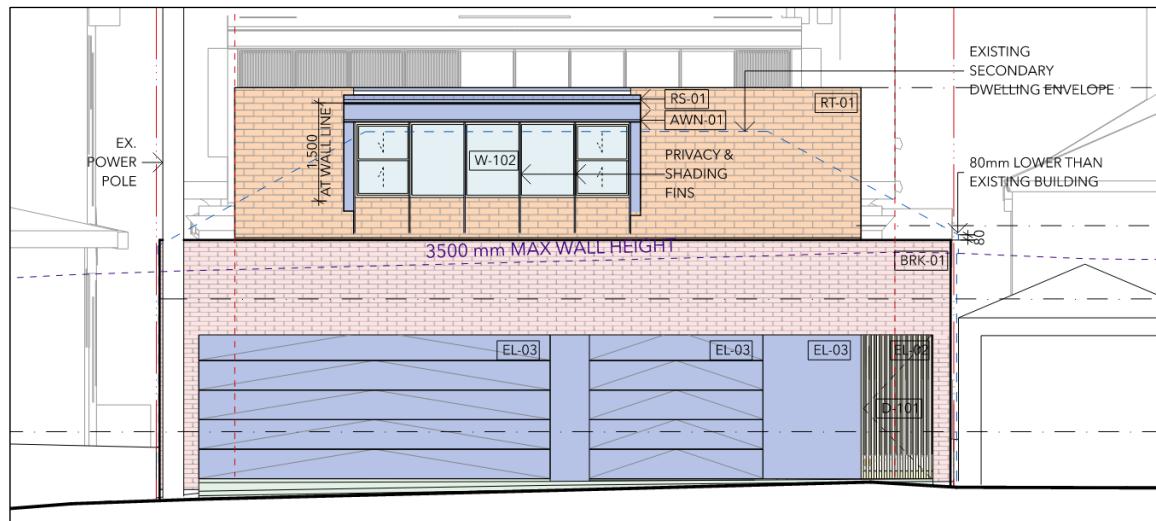


Figure 3 – Approved South East Elevation – DA/165/2023/A

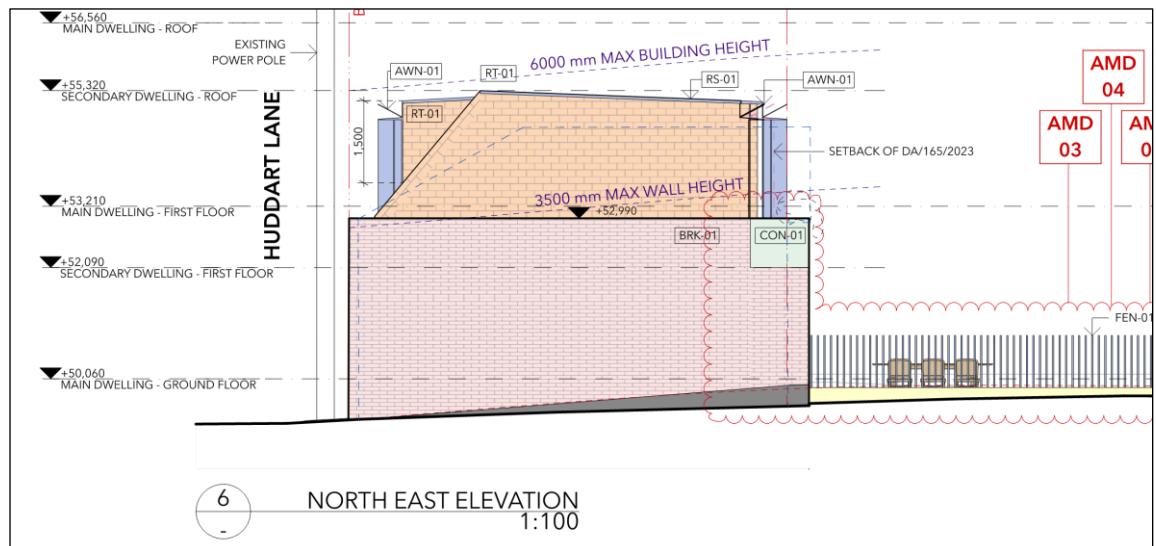


Figure 4 – Approved North East Elevation – DA/165/2023/A

The below **Figures** demonstrates compliance with Condition 2 f) with the exception of the planter bed area.

DT2/25

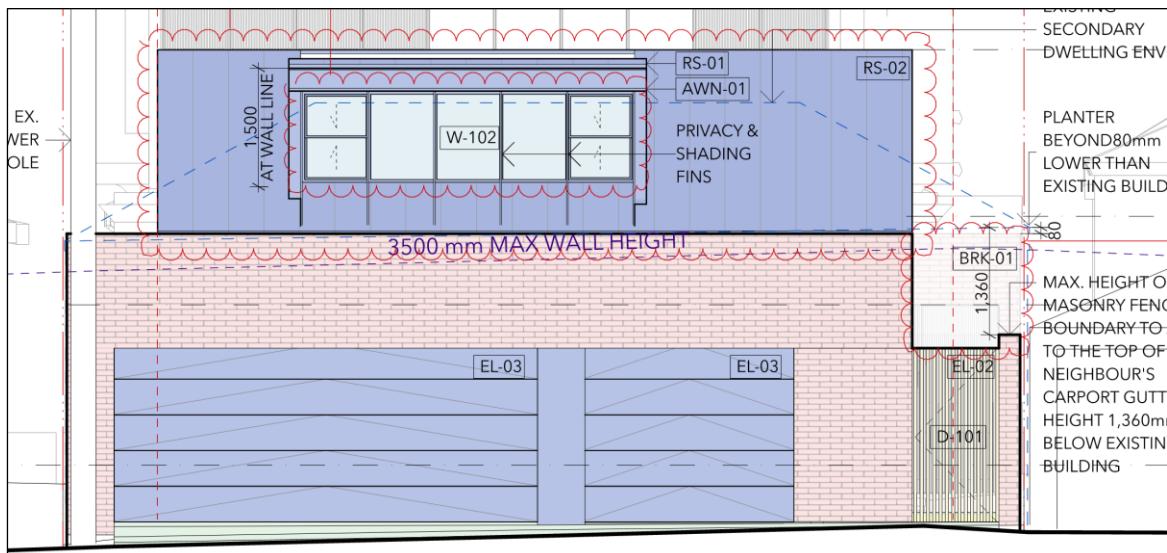


Figure 5 – Proposed South East Elevation – DA/165/2023/B

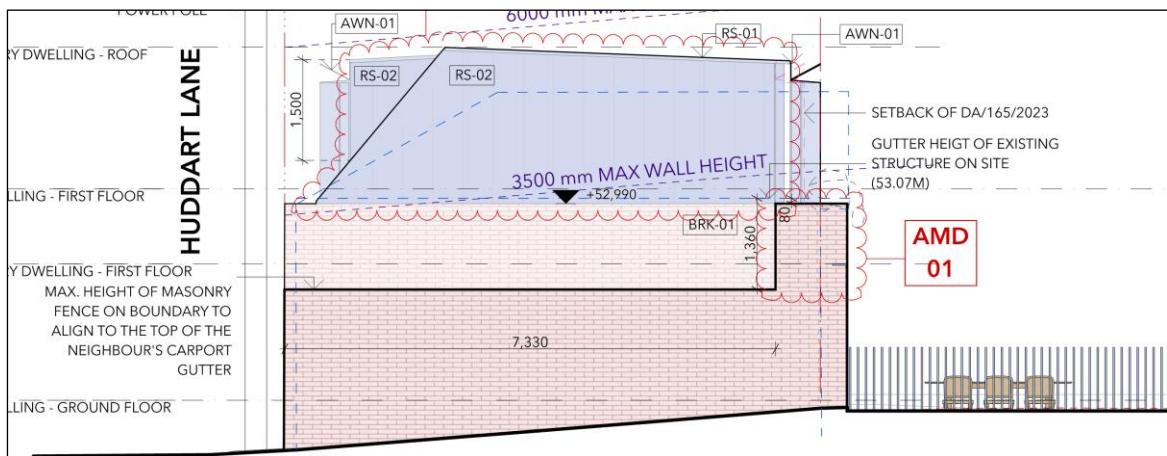


Figure 6 – Proposed North East Elevation – DA/165/2023/B

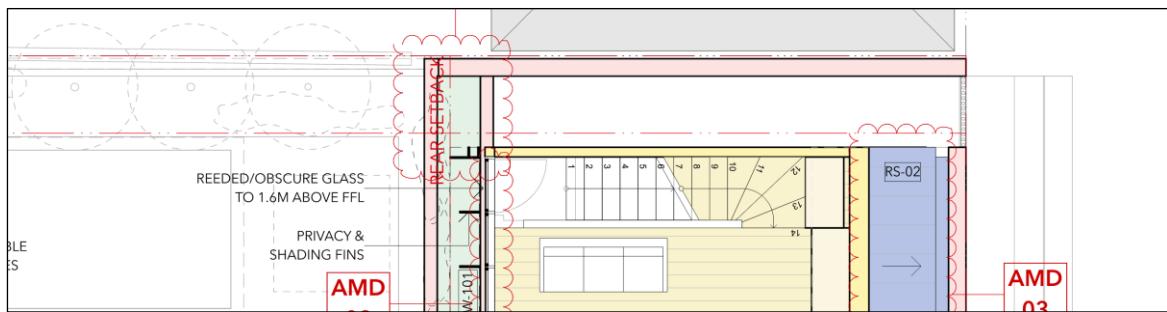


Figure 7 – Planter bed shown on proposed site plan – DA/165/2023/B

5. Section 4.55 Assessment

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

1. it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
2. it has consulted with any relevant public authorities or approval bodies, and
3. it has notified the application & considered any submissions made concerning the proposed modification

An assessment against the above criteria is provided below:

1. ***Substantially the Same Development***

Council is satisfied that the modifications proposed would result in a development which is substantially the same as that for which consent was originally granted.

2. ***Consultation with Other Approval Bodies or Public Authorities:***

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

3. ***Notification and Consideration of Submissions:***

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

6. Referral comments

Heritage

Comments

The proposed modification appears to be minor and acceptable; the works do not have any significant impact on the heritage fabric.

Recommendation

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

7. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>Clause 55A of the EP & A Regulation requires that a new BASIX certificate be lodged for amended plans or where a section 4.55 modification makes a material change to the BASIX commitments as originally approved.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>The applicant has submitted a new BASIX certificate. The plans have been checked with regard to this new certificate and they are consistent with the requirements indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	No draft EPI.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013. Refer to table below for relevant DCP controls.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Not applicable.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8. Randwick Comprehensive Development Control Plan 2013

Part B2: Heritage

Refer to Heritage comments.

Part B3 – Ecologically Sustainable Development

Suitable per provided BASIX.

Part B4: Landscaping and Biodiversity

Remains satisfactory.

Part B5: Preservation of Trees and Vegetation

Remains satisfactory.

Part B6: Recycling and Waste Management

Remains satisfactory.

Part B7: Transport, Traffic, Parking and Access

Remains satisfactory.

Part B8: Water Management

Remains satisfactory.

Part C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	<p>Overall design remains appropriate. No excess of visual bulk is considered to occur as a result of the retained elevated planter bed.</p> <p>Change of window and door frame materials is acceptable from Council's Heritage and Planning Officers.</p>	Suitable
4.6	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone 	<p>Material changes are suitable. Council Heritage Officer confirmed support.</p>	Suitable.
5	Amenity		
5.1	Solar access and overshadowing		

DCP Clause	Controls	Proposal	Compliance
	<p>Solar access to proposed development:</p> <p>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	The planter bed is unlikely to result in overshadowing to the Subject Site.	Suitable
	<p>Solar access to neighbouring development:</p> <p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments. 	<p>Considering the orientation of the Subject Site, the planter bed is unlikely to result in overshadowing.</p> <p>Window and door materials are anticipated to have no material impact on shadows and solar access to neighbouring development.</p>	Suitable
5.3	Visual Privacy		
	<p>Windows</p> <p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p>Only changes proposed to windows and doors is to the materiality of their frames.</p> <p>No change to privacy interface.</p>	Suitable
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to		

DCP Clause	Controls	Proposal	Compliance
	adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	No changes expected to acoustic privacy.	Suitable
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	All dwellings <ul style="list-style-type: none"> i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: <ul style="list-style-type: none"> - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces) 	Parking to remain as existing.	Parking to remain as existing.
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - Nil side setback on adjoining property; - Streetscape compatibility; - Safe for drivers and pedestrians; - Amalgamated driveway crossing. 	Boundary setback extent reduced.	Yes
7	Fencing and Ancillary Development		
7.4	Outbuildings		
	i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: <ul style="list-style-type: none"> - Finished external walls (not requiring maintenance); - No openings facing neighbours lots; and - Maintain adequate solar access to the neighbours dwelling v) For secondary street frontages a nil setback is only permitted if it adjoins a building constructed on the boundary. For detached garages at rear, first floor addition to existing may be considered subject to:	Outbuilding substantially the same. Boundary wall as required to be removed by Condition 2 f has been provided with the exception of the planter box. That planter box is considered appropriate and unlikely to have any unreasonable impact upon the locality.	Suitable

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DCP Clause	Controls	Proposal	Compliance
8.1	<ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. <p>vi) Must not be used as a separate business premises.</p>		
8	Area Specific Controls		
8.1	Development in Laneways		
	<p>i) Max. 6m height. Max. 4.5m external wall height. Mass and scale to be secondary to primary dwelling and upper level contained within roof form (attic storey).</p> <p>ii) At least 1 operable window to laneway elevation for casual surveillance</p> <p>iii) Aligns with consistent laneway setback pattern (if no consistent setback then 1m rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.)</p> <p>iv) Nil side setback allowed subject to: <ul style="list-style-type: none"> - Adjoining building similarly constructed - No unreasonable visual, privacy and overshadowing impacts </p> <p>v) Screen or match exposed blank walls on adjoining properties (ie on common boundary).</p>	<p>Outbuilding substantially the same.</p> <p>Boundary wall as required to be removed by Condition 2 f has been provided with the exception of the planter box.</p> <p>That planter box is considered appropriate and unlikely to have any unreasonable impact upon the locality.</p>	Suitable

9. Conclusion

The application is recommended for approval for the following reasons:

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

Responsible officer: Dean Lidis, Environmental Planning Officer

File Reference: DA/165/2023/B

Development Application Report No. D73/25

Subject: 13A French Street, Maroubra (DA/1009/2025)

Executive Summary

Proposal:	Alterations and additions to existing part-2, part-3 storey dwelling house including demolition and replacement of upper roof, internal reconfiguration and extension of lower ground floor, reconfiguration of ground and first floors, changes to windows, construction of a new swimming pool, associated ancillary and landscaping works.
Ward:	Central Ward
Applicant:	Vaughan Milligan Development Consulting Pty Vaughan Milligan Development Consulting Pty Ltd
Owner:	Mrs P Davy-Whyte & Mr S J Whyte
Cost of works:	\$1 804 000
Reason for referral:	The development contravenes the development standard for building height by more than 10% with a variation of 23.6% above the 9.5m maximum building height standard in the LEP

Recommendation

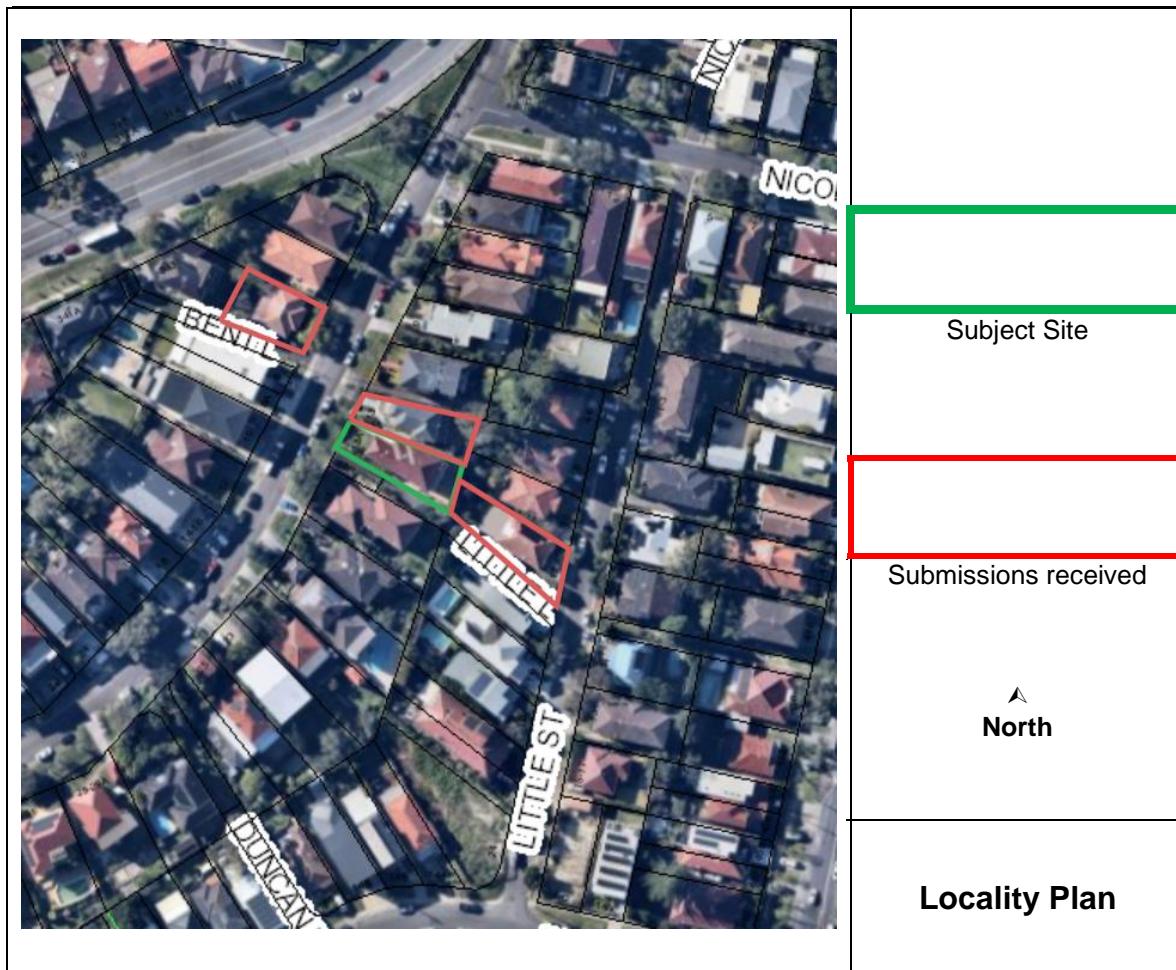
- A. That the RLPP is satisfied that the applicant's written requests to vary the development standard relating to Height of Buildings and Floor Space Ratio in Clauses 4.3 and 4.4A of Randwick Local Environmental Plan 2012 have demonstrated that:
 - i. Compliance with the relevant development standard is unnecessary and unreasonable in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development 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/1009/2025 for alterations and additions to existing part-2, part-3 storey dwelling house including demolition and replacement of upper roof, internal reconfiguration and extension of lower ground floor, reconfiguration of ground and first floors, changes to windows, construction of a new swimming pool, associated ancillary and landscaping works, at No. 13A French Street, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions 13A French Street Maroubra

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D73/25



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for building height by more than 10% with a variation of 23.6% above the 9.5m maximum building height standard in the LEP.

The proposal seeks development consent for alterations and additions to existing part-2, part-3 storey dwelling house including demolition and replacement of upper roof, internal reconfiguration and extension of lower ground floor, reconfiguration of ground and first floors, changes to windows, construction of a new swimming pool, associated ancillary and landscaping work.

The key issues associated with the proposal relate to evaluation of the R2 zone objectives, Clause 4.6 written submissions for variations to the height of buildings (HOB) and Floor space ratio (FSR) development standards, and sections of the RDCP relating to height of buildings, general building design, roof design and features, side and rear setbacks and visual privacy.

The application was notified to surrounding areas and 3 written submissions were received by way of objection. The main concerns related to visual bulk, views, and structural stability of the adjoining land.

The proposed development is generally considered to satisfy the applicable policies and provided environmental planning grounds for the variations to the development standard subject to non-standard conditions that require the gable roof design to be replaced with a hipped roof form and for the wide balcony columns and to be replaced with slimline columns and to extend no further than the existing depths to ensure the proposal maintains a roof design that is compatible with the existing prevailing pattern of hipped roof forms in the area and to suitably minimise adverse visual

bulk impacts. Several conditions are also included to ensure the structural stability of adjoining land noting that the proposal seeks to excavate below existing natural ground levels.

2. Site Description and Locality

The subject site is located on the eastern side of French Street adjacent to 13R French Street and Little Lane to the south and is presently occupied by an existing part-two part-three storey dwelling. The site is an irregular shape and has a frontage width of 8.38m, varying side depths of 33m and 35m, a 13.41m rear width and an overall site area of 373m². The locality is residential in nature and contains a mixture of semi-detached and free-standing dwellings and some older multi-unit housing stock. The site slopes significantly from front to rear having a 12% gradient. The sites on the opposite side of French Street are at a higher level than those on this side of the street. An aerial view of the site and street view photos of the site and surrounding area follow.

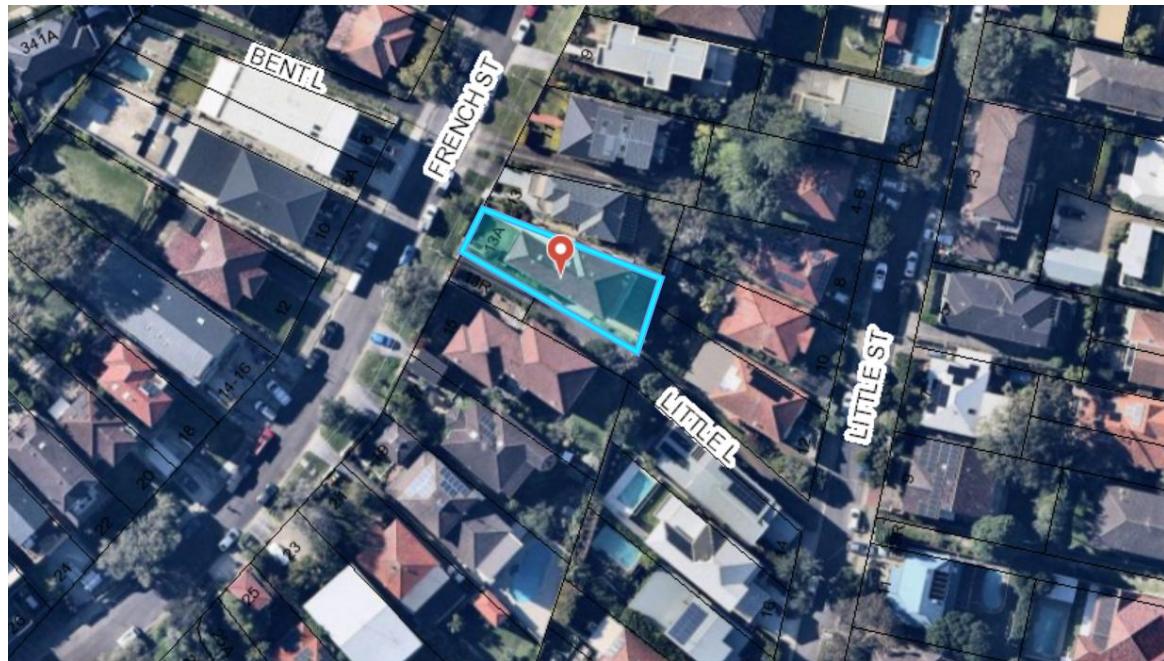
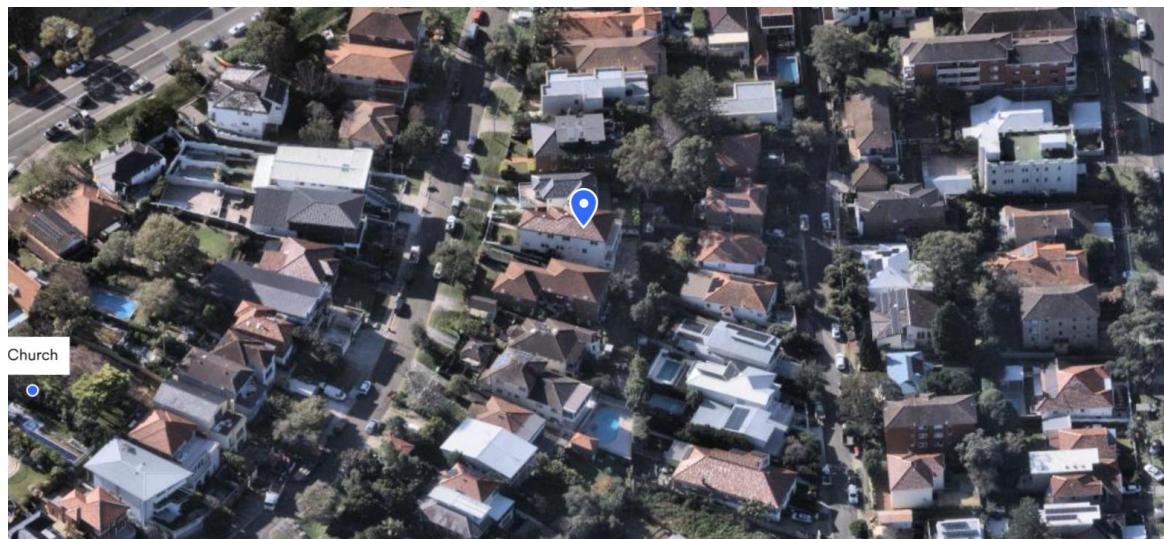


Figure 1: Aerial view of subject site and surrounding area (Council's system).



Three dimensional view of the site and surrounding area (source: Nearmaps)

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Photo 1: Subject site in middle, at left is No. 3 French Street, and at right on other side of 13R French and Little Lane is No. 15 French Street containing an RFB with 4 units.

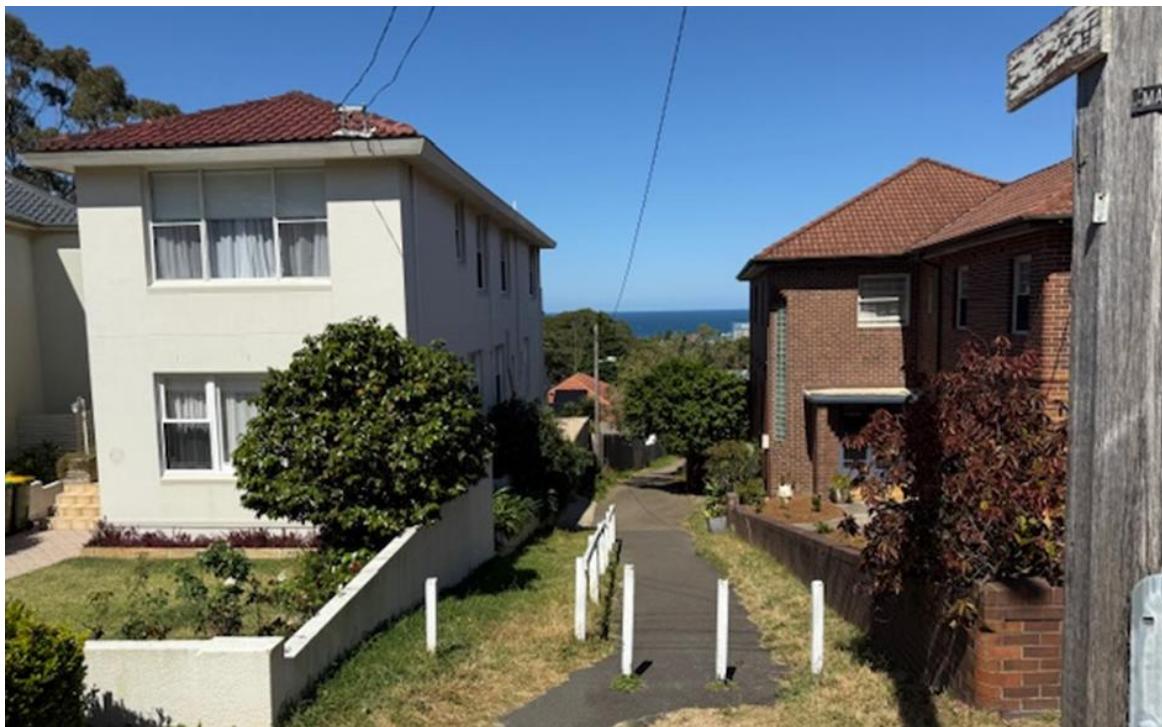


Photo 2: Separation between subject site at left and RFB at No. 15 French Street.



Photo 3: Front elevation showing the subject site at right and neighbouring dwelling at No. 13 French Street.



Photo 4: Rear of subject site as viewed from along Little Lane.

No 31 French Street – northern neighbour

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Photo 5: Rear elevation of No. 13 French Street – northern neighbours property showing lower ground level, middle elevated ground level balcony (see photo immediately below of view from this balcony) and first floor level windows (see photo of view from this window below)



Photo 6: South easterly view across subject site from rear elevated middle level rear balcony at No. 13 French Street



Photo 7: South easterly view across site from upper level room of No. 13 French Street.

Opposite side of street



Photo 8: No. 2 to 6 French Street from right to left. No. 6 French Street (at left of photo) is a part one part two storey dwelling at corner of French and Bent Lane, No. 4 French Street is a part two part three storey duplex (one above another) and No. 2 French Street is an RFB.

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Photo 9: View from front living room of No. 6 French Street shows a slither of a water view (marked in blue shading) at either side of roof planes of No. 13 and No. 13A French Street.

No 4 French Street – 3 storey duplex on opposite side of street



Photo 10: View from elevated front level balcony across subject site.



Photo 11: View from first floor level balcony

3. Proposal

The proposal seeks development consent for alterations and additions to an existing two and three-storey dwelling, construction of a new swimming pool, spa, and associated landscaping, upgrades to driveways, patios, balconies, and internal layout.

Details at each level:

Lower Ground Floor (Predominantly retains existing RL32.34)

- Demolition of internal partitions, external laundry, and rear stairs
- Reconfigure space to include:
 - Double garage (widened front single garage and generally maintains existing level RL33.34)
 - Rumpus room
 - Bathroom
 - Bike store and laundry (excavated down from RL34.82 to RL33.34)
 - Lift installation
 - New extension to provide a plant room
 - New swimming pool at rear

Ground Floor (Predominately retains existing RL36.42)

- Demolish front patio, entry pathway, and rear balcony
- Reconfigure to create:
 - Two bedrooms (each with ensuites)
 - Study
 - Master bedroom with walk-in robe (WIR) and ensuite
 - Add 3m² to entry, front patio, covered entry walkway, and rear balcony

First Floor (Predominately retains existing RL39.78)

- Demolish existing rear balconies
- Reconfigure to provide:
 - Open plan kitchen, dining, and living areas

- Bathroom
- Media/guest bedroom with balcony
- Construct new extended rear balcony with BBQ

External Works

- Extend vehicle crossing and internal driveway (access via Little Lane)
- Install new swimming pool, spa, and terrace at lower ground level (Predominantly retains existing rear yard level at RL33.20)
- Introduce landscaping, retaining walls, and paving
- Extend existing roof and change from hipped to gable roof.

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Landscaping and Tree Impacts

- Replanting proposed for privacy screening and visual softening
- No trees on-site are to be removed
- Two neighboring trees identified and protected:
 - Tree #1 – located at 13 French Street
 - Tree #2 – located at 12 Little Street

4. 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:

- 12 Little Street Maroubra
- 13 French Street Maroubra
- 6 French Street Maroubra

Issue	Comment
Proposed replacement of rear elevation with predominately glazing will impinge on privacy of No. 12 Little Street.	See visual privacy heading in key issues section of report
The changes to the roof at the rear will present significant visual bulk on properties to the rear that sit on lower ground level.	Noted, see discussion of height of buildings and roof design in key issues section of this report.
Earthworks Significant excavation for the swimming pool will be carried out on largely sand and request that consent be contingent upon the owners engaging builders with full insurance.	<p>The subject site sits above the objector's premises however, the excavation for the proposed pool will be below the neighbours rear yard level potentially impacting the existing retaining walls stability.</p> <p>A Geotechnical Report (Green Geotechnics Group, Ref. GG12087.001, dated 30 July 2025) has been prepared to assess the site conditions, which includes an evaluation of the sandy subsoil and provides recommendations to ensure safe excavation and construction practices.</p> <p>Conditions of consent require excavation, and structural works to be carried out in accordance with the structural engineer's design and the Building Code of Australia (BCA) requirements.</p>

Issue	Comment
	<p>A Construction Management Plan (CMP) and Dilapidation Report are required as conditions of consent to be provided prior to issue of the Construction Certificate, to protect adjoining properties and ensure accountability during construction. A post dilapidation report is also required.</p> <p>In relation to insurance, a suitable condition of consent requires a certain level of public liability insurance which will cover damage to neighbouring land. The certifier is required to ensure compliance with these statutory requirements through construction certificate and condition checks.</p> <p>Overall, subject to appropriate conditions of consent and adherence to the submitted geotechnical recommendations, the proposal will not result in any unacceptable risks related to earthworks or site stability.</p>
<p>Height variation (visual bulk and view loss) The proposed height variation at the rear, including the roof and balcony extensions, will increase the perceived visual bulk when viewed from 13 French Street and may adversely affect the existing views from that property.</p>	<p>A site inspection confirmed that the rear roof extension will be partially visible from the rear yard and deck area of No. 13 French Street. However, in terms of view impacts, the proposed works are not located within the direct line of sight to the primary headland and ocean views obtained from the rear internal living areas of that property.</p>
<p>Earthworks The sandy soil and steep topography raise concerns that the proposed earthworks may affect the structural stability of my property.</p>	<p>As noted earlier, conditions of consent require all excavation and structural works to be carried out in accordance with the engineer's design, the Building Code of Australia, and a Construction Management Plan. A pre- and post-construction Dilapidation Report will also be required to protect adjoining properties.</p> <p>Subject to compliance with these conditions and the geotechnical recommendations, the proposal is not expected to result in any unacceptable impacts on site or structural stability.</p>
<p>Sewer damage The location of the sewer along the easterly perimeter of the property could be damaged leading to implications for No. 13 French Street.</p>	<p>Suitable conditions pertaining to dial before you dig are required to be adhered to noting also that works will be required to be the subject of Sydney Water requirements prior to a Construction Certificate being issued for the development.</p>
<p>Side setbacks Works within 900mm of the northern side boundary leads to concerns over future development of our property.</p>	<p>Any future development of the adjoining property would be subject of its own merit assessment.</p>

Issue	Comment
Pool equipment location The proposed pool equipment along the northern side has the potential to result in adverse noise impacts and suggest relocation to the southern side boundary alongside Little Lane.	Agreed, the southern side of the site alongside Little Lane is a more suitable location for the pool equipment.
Pre and post dilapidation report Request conditions requiring pre and post dilapidation reports on the internal and external condition of No. 13 French Street.	Noted suitable conditions are included.
View loss Submission from No. 6 French Street on the opposite side of the street and future development of a first-floor level of this site.	<p>A site visit to the external premises reveals that views from the front patio are obstructed by existing trees within their front yard and largely on the same horizontal plane as the existing dwellings first floor level.</p> <p>Photos taken from around the property at similar levels to the internal floor level shows that views are largely across the first floor level of the subject dwelling on site and views across the side passageway between No. 13 and 13A French Street across the rear of the subject site where the proposal seeks to extend the rear balconies are narrow views of the ocean and not considered to be high quality views worthy of retention.</p> <p>In relation to views from a future first floor level, generally, only existing views from built or legally approved dwellings are considered in view-sharing/loss assessments. Future unbuilt floors or unapproved floors are not required to be considered. Notwithstanding, a site visit reveals show (photo 9) the quality of view is limited to a small slither between the sides of the two dwellings at No. 13 and 13A French Street and the proposed roof extension to the rear will result in the loss of this view. Refer to detailed assessment below.</p>
Character of streetscape The proposed height variation will result in change to the character of the line of residences along the east side of French Street.	<p>The streetscape along the eastern side of French Street is generally characterised by older dwellings of varying heights and densities. The proposal maintains a predominantly two-storey form, albeit with a change from the hipped roof typology commonly seen along this street to a gable roof.</p> <p>The key consideration is whether a hipped roof should be insisted upon at the front of the dwelling. Given that the dwelling remains predominately two storeys along the French Street frontage envisaged under the DCP and complies with the height of buildings development standard, it is not considered necessary to require a hipped roof form at the front. The scale of the front gable is relatively modest in comparison to the proposed rear</p>

Issue	Comment
	<p>gable, which represents the most substantial variations to the height of buildings standard. The rear element is already a three-storey scale and with the roof covering a larger area of the site, it does differ from the hipped roof forms typically observed at the rear of other dwellings along this part of French Street.</p> <p>Overall, while the roof form introduces some variation, the proposal change in roof form at the front is acceptable however the proposed change in roof form at the rear is inconsistent with the broader character and rhythm of the urban block.</p>
<p>Visual bulk</p> <p>The height variation will impact the current feel of space, sun, openness and airiness of the streetscape and create a feeling of over density, bulk and towering height people using the reserve along the south and adjoining properties at No. 13 and 15 French Street.</p>	<p>The rear gable element reaches a three-storey scale, which is inconsistent with the prevailing two-storey form along French Street and results in increased visual bulk, overshadowing, and reduced openness for neighbouring properties and the reserve. To mitigate these impacts, the rear gable should be replaced with a hipped roof form, which better aligns with the scale, rhythm, and character of the streetscape.</p> <p>Recommended Condition: Replace the rear gable roof with a hipped roof form consistent with surrounding dwellings.</p>
<p>Precedent</p> <p>The height of buildings variation will create a poor precedent impacting the future character.</p>	<p>The proposed development has been assessed on its individual merits, including compliance with the height of buildings standard and consideration of streetscape character. As the rear gable introduces a scale that is greater than surrounding dwellings, a condition requiring replacement with a hipped roof form will ensure no unacceptable precedent.</p> <p>Future developments would still be assessed against the relevant planning controls, the existing context, and the site-specific conditions, ensuring that the broader character of the area is maintained.</p>

5. Relevant Environment Planning Instruments

5.1. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the SEPP (Building Sustainability Index: BASIX) 2004.

5.1. SEPP (Biodiversity and Conservation) 2021

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

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

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

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

5.2. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

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

5.3. Randwick Local Environmental Plan 2012 (LEP)

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

The objectives of the R2 zone are:

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

The proposal is generally consistent with the specific objectives of the zone in that the proposed activity and built form will generally be contained within the existing envelope except for the proposed extension of the rear balconies and change to the roof form from hipped components to gable components at the front and rear.

Front roof form

In relation to the changes at the front, the streetscape along the eastern side of French Street at the street frontage is generally characterised by older dwellings of varying heights and densities. The proposal maintains a predominantly two-storey form, albeit with a change from the hipped roof typology commonly seen along this street to a gable roof.

The key consideration is whether a hipped roof should be insisted upon at the front of the dwelling. Given that the dwelling remains predominately two storeys along the French Street frontage envisaged under the DCP and complies with the height of buildings development standard. In this context, it is not considered necessary to require a hipped roof form at the front as it is a relatively modest change and does not impact the overall visual bulk of the development or neighbouring amenity.

Rear roof form

In comparison to the proposed front gable, the proposed rear gable replacement of the hipped roof form represents a substantial variation to the height of buildings standard. The rear element already a three-storey scale and with the roof covering a larger area of the site, differ from the hipped roof forms typically observed at the rear of other dwellings along this part of French Street. The proposed change in roof form at the rear is inconsistent with the broader character and rhythm

of the character of the area and presents additional visual bulk when viewed from the surrounding area notably those areas which are on similar localised low points of the topography exhibited on the adjoining sites and those eastward.

As such, the proposed change to the roof form at the rear will detract from the character of the area however it can be supported subject to a condition requiring a hipped roof form consistent with the size and scale of the existing roof to ensure no appreciable change to the visual bulk of the development. An awning roof over the rear balconies will provide adequate shelter from weather and will present as a low-profile roof form.

Balcony extensions

The proposal seeks extensions of the rear balconies moving closer to the rear boundary. The proposed rear balcony extensions are closer to the rear boundary than the development pattern in the locality and therefore does not satisfy the objective under the DCP to protect the amenity of residents or contribute to the desired future character of the area.

Overall, subject to conditions requiring the rear gable to be replaced with a hipped roof with the same profile as the existing ending at the rear building line, requirement for a simple awning style roof over rear balcony with slimline columns and reduction in depth of the balcony to be the same as existing, the proposal for alterations and additions will be consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4A: Floor space ratio (max)	0.75:1	0.816:1 Existing 0.924:1	No
Cl 4.3: Building height (max)	9.5m	11.74m	No

5.3.1. *Clause 4.6 - Exceptions to development standards*

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

6. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4A: Floor space ratio (max)	0.75:1	0.816:1 (Existing 0.924:1)	24.07m ² 64.93m ²	8.3% (Existing 23.21%)
Cl 4.3: Building height (max)	9.5m	11.74m Existing 11.74m	2.24m	23.5%

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 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.

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

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal maintains the existing two-storey presentation to French Street and the three-storey form at the rear, consistent with surrounding development patterns. No new gross floor area is proposed beyond the existing building footprint, and the overall FSR is reduced from 0.924:1 to 0.883:1. The proposal is therefore considered compatible with the existing and desired future character of the locality.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal incorporates varied wall planes, balconies, and fenestration providing articulation, with appropriate solar orientation and landscaping. The submitted BASIX certificate demonstrates compliance with water and energy efficiency targets.

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

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

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

The applicant's written justification contends that this objective is satisfied by noting that the proposal does not introduce substantial new built form, is within the existing building envelope, and therefore will not cause material additional visual or amenity impacts to adjoining properties.

Assessing officer's comment: The existing dwelling already exceeds the maximum FSR; however, the proposed alterations reduce gross floor area and overall building bulk notable at the rear ground level, however their extensions at ground and first floor level associated with the entry reconfiguration at the north-western corner of the site as the viewable from the front. Despite the additional floor area at this front part of the site, the proposed development retains a two-storey presentation to French Street and remains consistent with the established low-density residential character. On this basis, the objective a) is reasonably satisfied.

The proposal is accompanied by a BASIX certificate demonstrating Objective (b) is achieved.

Objective c) relating to heritage and contributory buildings is agreed as not being applicable.

In relation to objective d) while the proposed alterations generally remain within the existing building form, the rear elements although not constituting additional GFA do however introduce additional massing through roof changes and balcony projections that require refinement to minimise visual bulk and overshadowing. A condition is recommended requiring the rear gable to be replaced with a hipped roof and the rear balcony depths reduced to match existing setbacks. Subject to these amendments, amenity impacts are acceptable, and objective d) is satisfactorily met.

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

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

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

- The proposal results in a reduction of 40.21 m² in total gross floor area compared with the existing dwelling, thereby lessening bulk and scale.
- The proposal remains consistent with the surrounding residential character and is not visually intrusive.
- The proposal maintains reasonable amenity for neighbours in terms of visual bulk, privacy, overshadowing, and views.

Assessing officer's comment: The variation arises primarily from the retention of existing non-compliant floor space rather than the creation of inappropriate new bulk which is limited to small additions at the front middle part of the site where the bulk and scale is essentially remaining a two-storey form. The proposal includes a measurable reduction in floor area, contained within the existing envelope, and removes a laundry component at the rear improving open space areas at the rear lower ground level improving design efficiency and amenity outcomes for the future occupants. These represent legitimate site-specific environmental planning grounds justifying a minor FSR exceedance.

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

Conclusion

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

6.2. Exception to the Height of Buildings (HOB) development standard (Cl 4.3)

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

3. 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 HOB 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 HOB standard are set out in Clause 4.3 of RLEP 2012 are:

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

The applicants written submission is summarised as addressing the above objectives as follows noting their written submission in full is contained in Appendix 2 of this report:

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed dwelling will maintain a two-storey presentation to the street and a comparable roof ridge height (RL 44.89) to the existing dwelling. The additional height occurs only at the rear of the site, influenced by the slope and retention of the existing structure. The proposal will therefore appear consistent with the established built form of French Street, where dwellings range between one and three storeys.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the site is not located within a heritage conservation area and is not in proximity to a heritage item. This objective is therefore not directly applicable.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the increased height is concentrated to the centre and rear of the dwelling and does not result in unreasonable overshadowing, privacy loss, or view obstruction. Shadow diagrams indicate limited additional shadowing to adjoining sites. The separation afforded by Little Lane to the south assists in mitigating bulk and maintaining outlook and view corridors.

Assessing officer's comment:

While the dwelling maintains a generally consistent roof ridge height with its neighbours, the rear gable form introduces an area of increased height and bulk that is more visually prominent from the adjoining properties and the public reserve to the south. The extent of the variation (23.6%) and the resulting three-storey scale at the rear exceed the typical height and massing evident along this side of French Street.

To achieve an appropriate relationship with adjoining development, it is considered necessary to condition the design to replace the rear gable roof with a hipped roof form to reduce bulk and perceived height at the edge of the building envelope. Subject to this modification, the proposal will

satisfactorily achieve the objectives of the height standard by maintaining compatibility with the desired future character and minimising adverse amenity impacts.

In conclusion, with the recommended design amendment, the applicant's written request generally demonstrates that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case as it would generally limit it to a roof profile at the rear that is generally consistent with the existing.

4. 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 HOB development standard as follows:

- *The non-compliance arises primarily from the existing building form and sloping topography of the site toward the east.*
- *The proposal retains the existing ridge height and overall building envelope while rationalising the roof form, improving internal amenity through compliant ceiling heights, and enhancing energy efficiency.*
- *The variation supports a simplified and contemporary roof design consistent with recent approvals in the locality.*
- *The proposal does not cause any significant adverse environmental impacts and satisfies the objectives of the R2 Low Density Residential Zone and the objects of the EP&A Act relating to good design and orderly development.*

Assessing officer's comment: The variation is agreed as arising largely from site-specific conditions—the slope, retention of existing structure, and need to achieve appropriate internal ceiling heights. These are legitimate environmental planning grounds specific to this site.

However, the scale of the rear gable roof creates a disproportionate perception of bulk and a departure from the low-scale character of adjoining dwellings. On balance, given the nature of the development for alterations and additions and the provision of multiple living rooms within the existing envelope some with compliant floor to ceiling heights, a condition requiring modification of the rear roof form to a hipped design would maintain internal functionality, centralise the height breach within the building envelope while reducing the degree of non-compliance at the rear façade edge and its visual impact. With this change, there are sufficient environmental planning grounds to justify the height variation.

On the basis of the above assessment, and subject to a condition requiring modification of the rear gable roof to a hipped roof form to reduce the apparent height and bulk, it is considered that the requirements of Clause 4.6(3) have been satisfied. Development consent may therefore be granted for a development that contravenes the Height of Buildings development standard.

Conclusion

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

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 4 to 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

Clause 4.6:

- Height of buildings

The applicant's Clause 4.6 request demonstrates that strict compliance with the 9.5m height limit is unreasonable and unnecessary due to site-specific circumstances, including existing topography and approved floor levels. The 23.6% exceedance is partially an existing variation and the proposed additions to the roof occurring further to the rear gable roof ridge, is not immediately noticeable from the street. However, the proposed roof extension for a gable roof at the rear will be inconsistent with the hipped roof forms observed in the surrounding area. Moreover, the close proximity of this gable roof form to the rear boundary means it will be noticeable from the surrounding local area.

In order for the proposed roof form to respect the desired future character of the locality a key objective of the HOB standard it is considered reasonable for this gable roof form to be replaced with a hipped roof form and for it to end at the building line enabling a simple awning like structure over the rear balcony.

A condition to this effect will ensure the development maintains its existing presentation as a three-storey form at the rear elevation from the surrounding area, where its roof ridge remains substantially setback from rear. The conditioned variation will not cause unreasonable visual bulk, overshadowing, privacy loss, or view impacts to adjoining properties. Design excellence is demonstrated through integration with the existing roof design. Requiring a reduction of the ridge would not achieve a desired integrated outcome within the streetscape and there would not be any appreciable benefits of amenity for the neighbours in terms of solar access to north facing living rooms or their roof plane, which will continue to receive considerable solar access at the winter solstice.

The proposal as conditioned aligns with the objectives of the Randwick LEP 2012, the R2 zone, and the EP&A Act, promoting orderly development and good amenity.

Overall, the variation is justified and supported by sufficient environmental planning grounds noting the unique characteristics of the sites steeply sloping topography from front to rear and the consistency with the context of surrounding development. Strict compliance is therefore considered both unreasonable and unnecessary in the circumstances of the case.

- Floor space ratio

The FSR variation (8.83% or 24.72m² over) is supported on environmental planning grounds. The gross floor area of the development is actually being reduced from the existing gross floor area (23.21% or 64.93m²) by way of changing the use of an existing lower ground level space into an expanded double space garage (to meet Council parking requirements) and by removing an existing laundry at the rear which is to form part of the lower ground level open space. In short, the proposed gross floor area is largely encompassed within the existing building envelope except for a small 3.5m² additions to adjacent to the ground and first floor levels stairs at the north-western corner of the existing building.

These additions have no material impact on the streetscape or the neighbouring properties in relation to overshadowing, privacy loss, or visual bulk adjacent to the side passageway of the building to the north at No. 13 French Street and not opposite any windows.

Other changes not associated with gross floor area such as the extension to the roof and rear balcony are discussed under other sections of this report noting in brief that these elements are the subject of appropriate conditions to ensure an appropriate roof design, minimisation of visual bulk and privacy impacts.

The proposal as conditioned will be consistent with the objectives of the FSR standard (Clause 4.4) and the R2 Low Density Residential zone. It maintains an appropriate scale and bulk in relation to surrounding development notably those developed within French Street and the surrounding area, it supports sustainable development and preserves residential amenity and streetscape character.

Strict application with the FSR standard in this instance would provide no public benefit. The variation is site-specific and does not set an undesirable precedent. The proposal promotes the orderly and efficient land use consistent with the objectives of the Environmental Planning and Assessment Act 1979.

Overall, the Clause 4.6 request has satisfactorily addressed the statutory requirements, relevant case law, and LEP objectives. Subject to recommended design amendments, the variation is reasonable, well-founded, and capable of support. Approval is recommended in this instance.

Setbacks

- Ground Floor and first floor level (additions to ground and first floor level adjacent to north-western part of the dwelling):

The additions to the entry ground level and first floor level from the northern side boundary shared with No. 13 French Street do not meet the required 900mm side setback solution, being sited 566mm from the northern side boundary as they form a direct extension of the existing building line along the narrowing of the skewed side boundary.

Assessment: Although the side setbacks fall short of the current DCP 900mm minimum control, the proposal remains acceptable and will satisfy the objectives for the following reasons:

- The ground and first floor additions to the north-western corner are relatively minor additions and do not represent any significant visual bulk noting that they are not opposite any windows of the adjoining property at No. 13 French Street.
- The orientation of the site means that these additions do not result in any additional overshadowing of this neighbour's property at the winter solstice.
- The existing building is located behind these additions ensuring no impact on views from neighbouring or surrounding properties.
- These additions are located in the middle of the floor plate well away from the main street frontage ensuring no impact on streetscape character.

- Side and rear setbacks of rear balcony extensions:

The proposed first floor level extension of the balconies is setback between 1.6m from the southern side and 2.9m from the northern side boundary noting the predominant bulk associated with the existing buildings walls are not changing. In any event, the proposed balcony extensions are associated with sizable columns and these extensions do not meet the side setback controls for walls over 7m in this instance for the northern side with a maximum wall height of 9.08m requires a 2.98m side setback and for the southern side with a maximum wall height of 9.094m requires a side setback of 2.99m.

The proposed rear balcony extensions also do not comply with the rear setback controls of the Randwick DCP. The rear balcony depth is proposed to increase from the existing setbacks (ranging from approximately 4.08m–5.94m) to between 3.19m–4.86m from the rear boundary, further encroaching into the setback area that the DCP prescribes a minimum control of 8m.

In relation to overshadowing, the site's east–west orientation and sloping topography towards the rear mean that the existing dwelling already casts shadows over the lower levels of the adjoining dwelling across the laneway. The proposed extension of the rear balconies, combined with the relatively wide supporting columns and gable roof form, would introduce additional overshadowing of the southern neighbour. To mitigate these impacts, it is appropriate to require the balcony depth to remain as existing and the wide columns to be replaced with slimline supports, consistent with the conditioned change from a gable to a hipped roof. These modifications will lessen overshadowing and preserve access to sunlight for adjoining dwellings.

In relation to visual bulk, the open nature of the balconies reduces some massing; however, the proposed increase in depth would heighten the visual dominance of the rear elevation and further erode the pattern of setbacks that characterises this side of French Street. By retaining the existing balcony alignment and replacing the columns with slender supports, the structure will appear more lightweight, reducing perceived bulk and better integrating with the amended hipped roof form.

In relation to visual privacy, while some degree of overlooking is typical in this context—given the elevated nature of many rear balconies—the additional rearward projection would enable a broader viewing angle towards neighbouring properties and the reserve. Maintaining the existing rear

balcony depth will prevent this increased potential for overlooking and preserve the current level of residential amenity.

Overall, the proposal as modified (with the existing rear setback retained, columns replaced with slimline supports, and roof form amended to hipped) will achieve a more balanced outcome consistent with the objectives and performance criteria of Randwick DCP Part C1, particularly those relating to building setbacks, bulk, scale, and amenity.

Rear roof form, building height and character

The proposal seeks to alter and extend to the rear the existing roof form from a hipped design to a gable-ended roof, which at the rear breaches the maximum building height standard under Clause 4.3 of the Randwick Local Environmental Plan 2012 (RLEP 2012). The proposal also introduces a roof form that is inconsistent with the predominant hipped roof character within the surrounding streetscape.

In accordance with Clause 4.3, the height standard aims to limit the scale and visual impact of development, preserve neighbourhood character, and ensure that buildings are compatible with the desired future character of the area. Any exceedance must therefore be justified under Clause 4.6 – Exceptions to Development Standards, demonstrating that compliance is unreasonable or unnecessary and that the development meets the objectives of the standard. In this instance, the height breach whilst existing further exceeds the standard from the extended gable form, which increases perceived bulk at the rear which is already over a localised low point of the site and detracts from the established low-scale roof rhythm of adjoining dwellings. The proposal does not satisfy the objectives of Clause 4.3 as it fails to minimise visual bulk and disrupts the cohesive roof profile of the streetscape.

Assessment under Part C1 of the Randwick Development Control Plan 2013 – Low Density Residential further highlights the inconsistency of the design with local context. Section 3.2 – Building Height seeks to limit bulk and visual dominance of buildings when viewed from the street, while Section 4.1 – General Building Design requires development to respond sensitively to the prevailing character, scale, and form of surrounding dwellings. Section 4.5 – Roof Design and Features specifically aims “to ensure the roof design integrates with the architectural form, proportions and façade composition of the building” and “to ensure low-density residential development maintains a two-storey height and frontage to the streetscape.” Whilst it is generally accepted that the scale at the rear is unavoidably three storeys due to the natural fall in land in this part of the site and the area, the replacement of the original hipped roof with a gable further to the rear conflicts with these objectives by increasing apparent bulk, altering the established hipped roof pattern, and diminishing streetscape consistency.

The proposal has also been considered against the R2 Low Density Residential zone objectives in Clause 2.3 of the RLEP 2012, which require development to be compatible with the scale and character of the area and to protect the amenity of residents. The change in roof form and associated height increase are inconsistent with these objectives as the design introduces disproportionate visual massing and interrupts the uniform roofscape that contributes to the low-density character of the locality.

Having regard to the above, the proposed gable roof form and associated height exceedance are not supported in their current form, however to ensure consistency with the objectives of Clause 4.3 (Building Height), Clause 4.6 (Variation to Development Standards), the R2 Zone objectives, and the design and roof form controls in Sections 3.2, 4.1 and 4.5 of Part C1 of the Randwick DCP, a condition of consent is included requiring the replacement of the proposed gable roof with a hipped roof that reinstates a form consistent with adjoining dwellings and the established roof character of the locality. This modification will ensure the development satisfies the relevant policy controls, achieves visual cohesion within the streetscape and surrounding area, and protects the amenity of neighbouring properties.

Earthworks

The proposal involves earthworks to accommodate a new plant room at the north-west part of the site and to provide a consolidated lower ground floor level requiring minimal excavation. The most significant earthworks relate to the lower ground level plant room to be excavated around 3.07m below existing ground level and around 900mm from the side boundary shared with No. 13 French Street who have raised concerns relating to structural stability of their land and structures upon them.

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

Objectives:

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

Assessing officer's comments: The necessity to assess the proposal against the objectives is required because the development exceeds the 1m maximum depth of earthworks control.

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

The submitted Geotechnical Investigation Report (Green Geotechnics Pty Ltd, 30 July 2025) for 13A French Street, Maroubra satisfactorily addresses the objectives for earthworks under Clause 6.7 of the Randwick Local Environmental Plan (RLEP 2012) and the relevant provisions of Part C1 (Residential Development) of the Randwick Development Control Plan (RDCP 2013). The report meets the objectives of both instruments as follows:

The suitability of site and ground conditions (RLEP 6.7(1)(a), DCP C1 Section 4.5.1) have been suitably explored by way of two boreholes drilled to depths of 3.2m and 5.5m in line with the proposed excavation depth. The tests identified subsurface conditions as loose to medium-dense aeolian sands overlying weathered Hawkesbury Sandstone and confirms the site is stable and suitable for the proposed excavation and construction works provided the recommended footing and retaining wall design measures are implemented.

The proposed excavation up to 2.7m for the gym, and 2m for the pool (RLEP 6.7(1)(b)–(d), DCP C1 s.4.5.2) is considered achievable using standard plant, without the need for rock hammering or dewatering. Retaining wall design parameters are provided and recommendations include the use of contiguous or secant pile walls where space limits battering. It is important to also note that the report requires progressive geotechnical inspection during excavation, consistent with DCP objectives to ensure stability of the slope and retaining wall.

In relation to groundwater and drainage (DCP C1 s.4.5.3), it isn't anticipated that there is adverse groundwater impacts or site dewatering warranted, aligning with Council's requirement to protect adjoining land from subsidence or drainage redirection.

In relation to construction and amenity Impacts (RLEP 6.7(1)(e), DCP C1 s.4.5.4), the geotechnical report recommends a pre-construction dilapidation survey of adjoining properties, vibration control during piling, and monitoring for potential ground movements—addressing the DCP's amenity protection objectives. It is also noted that temporary shoring or batter slopes are used to mitigate off-site movement and ensure worker safety.

Overall, it is considered that the Geotechnical Report provides sufficient detail and recommendations to satisfy Council's requirements under both the RLEP earthworks clause and

DCP Part C1 earthworks and site stability provisions, subject to compliance with its recommendations during detailed design and construction.

[View Sharing](#)

A submission has been received from No. 6 French Street noting that they have referred to No. 4 French Street also. A site visit was conducted at both No. 4 and No. 6 French Street for the purposes of a view loss assessment.

The aerial 3-d image below shows the direction of views across the site from No. 6 and 4 French Street.



Figure 3: Direction of views across to the ocean and headland adjacent to the Malabar Riffle range.

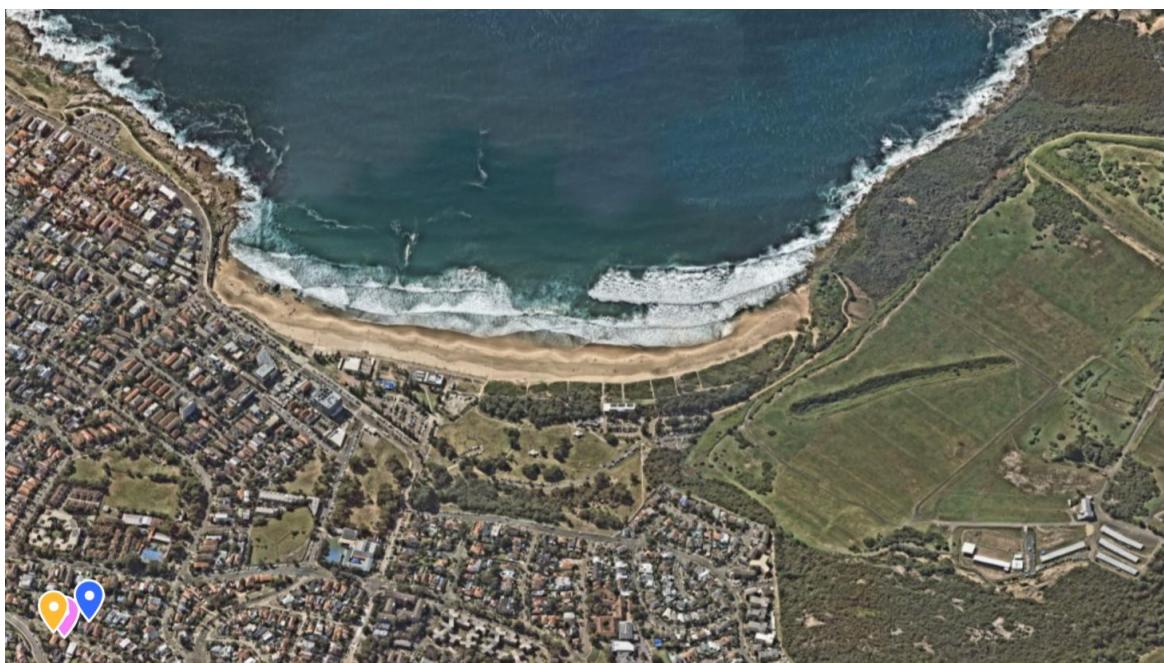


Figure 4: Wider aerial showing the headland the subject of views.

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

View sharing assessment

The owner of No. 6 has made a submission that the proposed development most notably will impact a future first floor addition to their existing single storey dwelling. They also indicate that the proposal will impact the view from the adjoining dwelling to its north at No. 4 French Street. A site visit to No. 6 French Street included discussion with the owner of No. 4 French Street who indicated that they made a submission however one has not been observed on Council records. In any event, a view loss assessment is conducted for each level of the duplex at No. 4 French Street.

The fundamental question is whether no further protrusion of the roof beyond the existing variations should be insisted upon given the context of the view considering overall size and scale of the development and those in the surrounding area and or whether a more skillful design and/or location could retain the view whilst also achieving similar amenity for the occupants of the dwelling. All of these are considered in the assessment of this application subject of the tests under the planning principle for view sharing.

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

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

Step 1 - Value and quality of the view,

No. 6 French Street



Photo 9 repeated: View from front living room of No. 6 French Street shows a slither of a water view (marked in blue shading) at either side of roof planes of No. 13 and No. 13A French Street.

The view from a corner living room balcony of 6 French street is a low value view as a result of the following conditions:

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- The view is a distant view around 1km to the east.
- The view is along a narrow corridor across the rear of the site.
- The view is interrupted by existing vegetation within the site

Step 2 - Reasonable expectation of view retention

In assessing views, one must also have regard from where the view is obtained. The view is obtained from a living room which increases expectation of view retention; however, the expectation is somewhat lessened as this view is from the elevated ground level of the site in a locality, which generally contains two storey scales.

Step 3 - Impact on view

Whilst the above image of the view doesn't show the impact of the view, the critical reference point is the roof of the existing dwelling is sought to extend further to the rear into the blue shaded area. This means that the view will largely be lost.

Step 4 - Reasonableness of the proposed development

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

1. The first question relates to whether a non-compliance with one or more planning controls results in view loss.
2. The second question posed by the Court relates to whether a more skillful design could provide the same development potential whilst reducing the impact on views.

Compliance

Regarding the first question, the proposed rear roof extension relies on a Clause 4.6 variation to exceed the Height of Buildings development standard. As outlined in earlier sections of this report, the extended roof form and gable design are also inconsistent with the prevailing character of predominantly hipped roofs in the locality. These elements therefore contribute to the identified view impacts.

Skillful design

In relation to the second question, the proposal incorporates a 2.52 m floor-to-ceiling height, which is below the 2.7 m minimum requirement in Part C1 of the DCP for low-density residential dwellings. Although the raked gable roof provides substantial internal clearance—exceeding 4.5 m at its peak—it also results in reduced side clearances and contributes to the overall bulk and associated view loss.

While the design intent of the gable roof is understood, it must be considered in the context that the application is for alterations and additions rather than a new dwelling. This inherently creates both opportunities and constraints regarding ceiling heights, roof form, and setbacks. It is further noted that although the proposed living area enjoys the most favourable outlook on the site, it is not the sole living space, which reduces the weight given to the applicant's development expectations in this regard.

Overall, although the view from No. 6 French Street is of low value and would not ordinarily prevent a rear roof extension, in this instance the proposal represents an unreasonable development expectation for the reasons outlined above. As discussed earlier in this report, a condition requiring the roof profile to closely match the existing roof form—and limiting the rear element to a flat awning-type structure—will ensure the development does not result in any appreciable loss of view from No. 6 French Street.

No. 4 French Street.

Given the outcome from the above assessment at No.6 French Street is generally consistent with the location and outlook of No.4 French Street, further consideration of views from No. 4 French Street is limited noting that view impacts will only result to the dwelling at the elevated ground level with no appreciable impacts to the first-floor level dwelling as shown in photo 11 of this report.

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

9. Conclusion

That the application to carry out alterations and additions to existing part-2, part-3 storey dwelling house including demolition and replacement of upper roof, internal reconfiguration and extension of lower ground floor, reconfiguration of ground and first floors, changes to windows, construction of a new swimming pool, associated ancillary and landscaping works be approved (subject to conditions) for the following reasons:

- Subject to the recommended design amendments, the proposal is consistent with the objectives of the Randwick LEP 2012 and the relevant design and amenity controls in the Randwick DCP 2013.
- The development, as conditioned, is consistent with the objectives of the R2 Low Density Residential zone, providing for housing needs while maintaining neighbourhood amenity and ensuring compatibility with the established scale and character of the area.
- The conditioned modifications to the roof form, rear balconies, and setbacks ensure that the resulting scale and built form are appropriate for the site context and align with the desired future character of French Street.
- The proposed works largely remain within the footprint and general envelope of the existing building, with only minor additions, and the conditioned design changes reduce potential visual bulk, overshadowing, and privacy impacts on adjoining properties.
- The Clause 4.6 variations to Height of Buildings and Floor Space Ratio are supported on sufficient environmental planning grounds and, with the required amendments, achieve the objectives of the development standards while avoiding any adverse impacts on the locality.
- The earthworks have been demonstrated through geotechnical investigation to be structurally feasible and capable of being safely managed, with conditions ensuring excavation stability and protection of neighbouring properties.
- View impacts have been assessed in accordance with the Tenacity planning principle, and the conditioned roof and balcony amendments ensure that the development represents a reasonable, skillful design that avoids appreciable loss of views from No. 6 French Street and preserves equitable view sharing.

Overall, the proposal as modified provides a well-resolved built form that integrates with the existing dwelling, respects the established roofscape, and delivers improved internal functionality while maintaining residential amenity within the surrounding area.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for alterations and additions to existing part-2, part-3 storey dwelling house including demolition and replacement of upper roof, internal reconfiguration and extension of lower ground floor, reconfiguration of ground and first floors, changes to windows, construction of a new swimming pool, associated ancillary and landscaping works.

This report is based on the following plans and documentation:

- Architectural Plans by Richard Coskie dated 10/9/2025
- Statement of Environmental Effects by Vaughan Milligan dated September 2025
- Detail & Level Survey by CMS Surveying dated 3/2/2025
- Geotechnical Report by Green Geotechnics 30/7/2025

General Comments

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

Parking Comments

It is proposed to extend a single garage into a double garage. The proposed garage **complies** with the minimum requirements of Australian Standard 2890.1:2004 in regard to size, grade, and overhead clearance.

Driveway Comments

The submitted plans indicate the proposed driveway will have grades of approximately **31%** at the eastern edge of driveway and **16%** at the western edge of driveway which would usually not be acceptable but that the existing scenario is currently steep and that it will not worsen the current vehicle accessibility.

Flooding Comments

The site lies within the catchment for the Council commissioned and adopted "Maroubra Flood Risk Management Study Plan". The study does predict the site will be impacted by flooding for all storm events greater than or equal to the 1% AEP (1 in 100-year) storm event. The study indicated that flood water is expected on Little Lane.

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.

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

- a. Council's underground drainage system located in Little Lane; OR
- b. To the site's existing stormwater system.

Additionally, Development Engineering has included a condition in this report for a grated trench drain, sized for the 1% AEP storm event, is required to be installed along the garage opening.

Undergrounding of power lines to site

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.*

Appendix 2: Applicant's written requests seeking to justify the contravention of the development standards for:

- Height of buildings
- Floor space ratio

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APPENDIX

WRITTEN REQUEST - CLAUSE 4.6 – RLEP 2012

CLAUSE 4.3 HEIGHT OF BUILDINGS

PREPARED SEPTEMBER 2025

Vaughan Milligan Development Consulting Pty Ltd

D73/25

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
RANDWICK LOCAL ENVIRONMENTAL PLAN 2012**

13A FRENCH STREET, MAROUBRA

**ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING, CONSTRUCTION OF A
SWIMMING POOL AND ASSOCIATED LANDSCAPING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE HEIGHT OF BUILDINGS
CONTROL AS PRESCRIBED BY CLAUSE 4.3 OF THE
RANDWICK LOCAL ENVIRONMENTAL PLAN 2012**

For: Alterations and additions to an existing dwelling, construction of a swimming pool and associated landscaping.

At: 13A French Street, Maroubra

Owner: Penny and Sam Davy-White

Applicant: Penny and Sam Davy-White
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP 2012). In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the RLEP 2012.

This submission has been prepared to address the provisions within Section 35B of the *Environmental Planning and Assessment Regulation 2021*, and as discussed within this Written Request, will demonstrate the grounds on which the proposal considers the matters set out in Clause 4.6(3)(a) and (b) of the RLEP 2012.

2.0 Background

Clause 4.3 restricts the height of the building in this locality to a maximum of 9.5m measured above existing ground level.

This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

As a consequence of the simplified roof design and the slope of the land towards the east, the proposal will present a maximum roof height of 11.74m at the rear of the dwelling, representing a variation of 23.6%.

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The proposal therefore does not comply with Council's maximum height of buildings. Despite the building height variation, the proposed roof ridge height of RL44.89 does not exceed that of the existing dwelling.

The proposal will result in a development that presents a comparable height, bulk and scale in relation to the existing dwelling on the site and those on the immediately adjacent and nearby properties.

Is Clause 4.3 of RLEP 2012 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of the development and includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"

(b) Clause 4.3 relates to the height of a building. Accordingly, Clause 4.3 is a development standard.

3.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Randwick LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary.

The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

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

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- (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,
- (caa) clause 5.5.
- (ca) clause 6.16(3)(b)

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4.0 Purpose of Clause 4.6

RLEP 2012 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

5.0 Objectives of Clause 4.6

Clause 4.6(1) of RLEP provides:

(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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]* where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions. Clause 4.6(2) of the LEP provides:

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(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.*

Clause 4.3 (the Height of buildings standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the RLEP.

Clause 4.6(3) of RLEP provides:

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

The proposed development does not comply with the height of buildings control development standard pursuant to Clause 4.3 of RLEP which specifies a maximum building height of 9.5m in this area of Randwick. The proposed new dwelling will result in a maximum building height of 11.74m at the eastern extent of the proposed first floor roof, which exceeds the height of buildings control by 2.24m or 23.6%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the standard.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(6) relates to subdivision and is not relevant to the development.

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

The proposal will provide for the enhancement of amenity and functionality of the existing dwelling, while maintaining the low density use of the site.

The proposed works are largely contained within the existing building footprint and envelope and will not unduly impact the character of the streetscape or the locality.

Similarly, the proposal will not unreasonably impact the amenity of adjoining properties in relation to privacy, overshadowing, view sharing or visual bulk.

Notwithstanding the proposed height of buildings variation, the resultant development will contribute positively to the streetscape and local character while maintaining compatible level of bulk and scale.

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6.0 The Nature and Extent of the Variation

This request seeks a variation to the maximum height of buildings development standard contained in clause 4.3 of RLEP 2012.

Clause 4.3 of RLEP 2012 specifies a maximum height of 9.5m for dwellings at the subject site.

The proposed development presents a maximum height of 11.74m. The non-compliance represents a variation of 2.24m or 23.6% to the 9.5m standard by clause 4.3 of RLEP 2012. The extent of the non-compliance is shown in Figure 1 below.

The height breach relates to the primary roof form over the rear portion of the dwelling. As depicted in the above plan extracts, the façade and forward portion of the dwelling comfortably complies with the maximum 9.5m height control.

The height variation is heavily influenced by the proportion of the existing dwelling that is retained and the sloping topography of the site towards the eastern boundary.



Fig 1: Extract of NE Height Plane Diagram illustrating the extent of the existing and proposed height breach
(Source: Richard Coskie)

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7.0 Relevant Caselaw

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

The first and 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: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of RLEP 2012 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

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- (a) compliance is unreasonable or unnecessary; and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard

8.0. Request for Variation

8.1 Is compliance with clause 4.3 unreasonable or unnecessary?

This request relies upon the first way identified by Preston CJ in Wehbe, which seeks to establish that the objectives of the standard are achieved, despite non-compliance with the standard prescribed.

Each objective of the height of buildings development standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The surrounding area is predominantly characterised by residential development between one and three storeys in height.

Importantly, the presentation of the dwelling to the street frontage remains as two-storeys with the three-storey element at the rear. The height of the dwelling at the front building line also remains comparable to the existing dwelling and the higher rear roof section is less visually prominent within the streetscape.

It is noted that the proposed maximum roof ridge height does not exceed that of the existing dwelling (RL44.89) and is generally consistent with those of the immediately adjoining properties to the north and south, being RL44.05 and RL44.08 respectively. In this context, the proposal will not be perceived as visually intrusive or jarring within the streetscape.

Notwithstanding the height variation, the proposed alterations and additions have been sensitively designed to be complimentary and compatible with the surrounding residential character while exhibiting a modern and contemporary architectural form.

The resultant dwelling is considered to be compatible with the height bulk and scale of surrounding development in French Street. The height, bulk and character of the development will present within the streetscape as a stepped two storey dwelling house that is compatible with the prevailing building typology.

Accordingly, the objective is achieved.

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

The proposal is not within a Heritage Conservation Area nor is it in proximity to any heritage items.

(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 new roof is not considered to cause any unreasonable impacts to adjoining properties

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in relation to visual bulk, privacy, overshadowing or view sharing.

The additional roof height is located centrally within the site and not be visually prominent or disrupt views from surrounding properties or the public domain. Similarly, there will not be any unreasonable overshadowing of adjoining properties as demonstrated by the accompanying shadow diagrams. The additional building separation to the south and south-east afforded by the adjoining Little Lane assists in affording privacy, limiting overshadowing and maintaining view corridors past the site.

Accordingly, the objective is achieved.

8.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. 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 s 1.3 of the EPA Act.*
24. *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].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:

Ground 1 – Compatibility with Existing Development

The majority of the first floor building fabric, including the floor and external walls, is proposed to be retained, with the height of this existing fabric and the topography below causing the roof above to breach the height plane.

As discussed above in relation to objective (a), the proposed roof maintains the existing ridge height and is compatible with the respective heights of the adjoining dwellings to the north and south. In doing so, the proposal maintains the general bulk and scale of surrounding dwellings in the visual catchment.

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Ground 2 – Internal Amenity

Noting the retention of the existing first floor fabric as discussed above, the proposed roof design enables compliance with the required 2.7m floor-to-ceiling height and facilitates a high level of internal amenity for the occupants. The inclusion of clerestory windows at the front and rear elevations allows for sufficient sunlight access to the living areas without the need for north-facing windows that may impact the privacy of the adjoining property.

Ground 3 – Design Quality

The proposal incorporates a simplified roof form relative to the existing dwelling that represents a contemporary building form and enhanced aesthetic appearance.

Additionally, consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

Objects of the Act

These environmental planning grounds demonstrate that the proposed development will promote the orderly and economic use of the land and represents good design and amenity of the built environment, thereby satisfying Cl 1.3(c) and 1.3(g) of the Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, specifically the ability to design and construct a rationalized roof form over the existing first floor.

It is noted that in *Initial Action*, the Court 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:

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 floor space ratio development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the floor space ratio 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 than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

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8.3 Is the proposed development consistent with the objectives of clause 4.3 and the objectives of the R2 zone?

Section 7.1 of this written request suggests the first test in Wehbe is made good by the development, in so far as the objectives of clause 4.3 of RLEP 2012 are satisfied.

It is considered that notwithstanding the breach of the height of buildings control, the proposed development will be consistent with the individual Objectives of the R2 zone as follows:

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

Comment: The proposed development provides for the housing needs of the occupants of the dwelling.

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

Comment: Not applicable – the proposal relates to residential development.

- ***To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.***

Comment: The desired future character for detached dwelling houses in the Maroubra area considers that it is important that development reflects the scale of the existing built form and retains the low-density residential character of the locality.

The proposed additions and alterations to the existing dwelling are sensitively designed to ensure that the residential character of the area is preserved and the proposed dwelling is compatible with its neighbours and the surrounding building stock is enhanced with the improved functionality of the proposal.

- ***To protect the amenity of residents.***

Comment: The proposed development has been sensitively designed to provide for improved residential amenity for the owners through the new living spaces and also the inclusion of the additional off street carparking opportunity and proposed swimming pool.

- ***To encourage housing affordability.***

Comment: Not applicable – the proposal is for a single residential dwelling and housing affordability is not a principle design requirement within the LEP or DCP for single housing. The dwelling is within a low density residential zone and compatible with the range of uses of the neighbouring properties.

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

Comment: Not applicable – the proposal relates to residential development.

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8.4 Has the Council considered the matters in clause 4.6(5) of RLEP 2012?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is specific to the design of the proposed development for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard in this particular instance.

9.0 Conclusion

This development proposes a departure from the maximum building height development standard, with a maximum building height of 11.74m.

This written request to vary to the maximum building height development standard specified in Clause 4.3 of the RLEP 2012 adequately demonstrates that:

- strict compliance with the standard is unreasonable or unnecessary as the objectives of the standard will be met; and
- there are sufficient environmental planning grounds to justify the departure from the standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of RLEP 2012 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

Vaughan Milligan Development Consulting Pty Ltd



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APPENDIX

WRITTEN REQUEST - CLAUSE 4.6 – RLEP 2012

CLAUSE 4.4A(3)(3) - EXCEPTIONS TO FLOOR SPACE RATIO ZONES R2 AND R3

PREPARED SEPTEMBER 2025

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
RANDWICK LOCAL ENVIRONMENTAL PLAN 2012**

13A FRENCH STREET, MAROUBRA

**ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING, CONSTRUCTION OF A
SWIMMING POOL AND ASSOCIATED LANDSCAPING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE FLOOR SPACE RATIO
CONTROL AS PRESCRIBED BY CLAUSE 4.4A(3)(3) OF THE
RANDWICK LOCAL ENVIRONMENTAL PLAN 2012**

For: Alterations and additions to an existing dwelling, construction of a swimming pool and associated landscaping.
At: 13A French Street, Maroubra
Owner: Penny and Sam Davy-White
Applicant: Penny and Sam Davy-White
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Randwick Local Environmental Plan 2012. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio as prescribed in Clause 4.4A(3) of the Randwick Local Environmental Plan 2012 (RLEP 2012).

This submission has been prepared to address the provisions within Section 35B of the *Environmental Planning and Assessment Regulation 2021*, and as discussed within this Written Request, will demonstrate the grounds on which the proposal considers the matters set out in Clause 4.6(3)(a) and (b) of the RLEP 2012.

2.0 Background

Clause 4.4A(3)(3) restricts the floor space ratio of a building used as a dwelling house in Zone R2 in this locality, with a site area $\geq 300\text{m}^2$ and $\leq 450\text{m}^2$, to a maximum of 0.75:1, which for this site with an area of 373m^2 , permits a maximum gross floor area of 279.75m^2 .

The existing dwelling provides for a gross floor area of 344.68m^2 or a floor space ratio of 0.924:1, exceeding the gross floor area control by 64.93m^2 or 23.21%.

The proposed alterations and additions will present a gross floor area of 304.47m^2 or a floor space ratio of 0.883:1, which will exceed Council's floor space ratio control by 24.72m^2 or 8.83%.

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Despite the FSR exceedance, the proposal will result in a development that presents a reasonable bulk and scale, respects the topography of the site and maintains consistency with the scale and intensity of surrounding development.

In this regard, it is noted that the proposed development results in a reduction in gross floor area of 40.21m², relative to the existing dwelling.

Is Clause 4.4A(3)(3) of RLEP 2012 a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of the development and includes:
"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"
- (b) Clause 4.4A(3)(3) relates to the maximum floor space ratio of a building or its size and resulting bulk and scale. Accordingly, Clause 4.4A(3)(3) is a development standard.

3.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Randwick LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary.

The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

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Clause 4.6 Exception to development standard

(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,*

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- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5.
- (ca) clause 6.16(3)(b).

4.0 Purpose of Clause 4.6

The Randwick Local Environmental Plan 2012 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

5.0 Objectives of Clause 4.6

Clause 4.6(1) of RLEP provides:

- (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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]* where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

(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.*

Clause 4.4A(3) (3) Exceptions to floor space ratio – prescribes a floor space ratio for dwelling houses within land zoned R2 with a site area of $\geq 300\text{m}^2$ and $\leq 450\text{m}^2$ of 0.75:1.

The floor space ratio control is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the RLEP.

Clause 4.6(3) of RLEP provides:

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

The proposed development does not comply with the maximum floor space ratio development standard pursuant to Clause 4.4A(3) of RLEP which specifies a maximum floor space ratio of 0.75:1 in this area of Randwick. The proposal will result in a maximum floor space ratio of 0.883:1, which exceeds the standard by 24.72m^2 or 8.83%.

As discussed, the existing dwelling provides for a gross floor area of 344.68m^2 or a floor space ratio of 0.924:1, exceeding the gross floor area control by 64.93m^2 or 23.21%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the standard.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

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Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4A(3) of RLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The application of Clause 4.6 is necessary to achieve a better outcome in this instance as the existing dwelling exceeds the floor space ratio development standard. As such, a degree of flexibility in the application of the standard will enable the construction of alterations and additions that do not increase the gross floor area of the dwelling and are consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

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

The proposal will provide for the enhancement of amenity and functionality of the existing dwelling, while maintaining the low density use of the site.

The proposed works are largely contained within the existing building footprint and envelope and will not unduly impact the character of the streetscape or the locality.

Similarly, the proposal will not unreasonably impact the amenity of adjoining properties in relation to privacy, overshadowing, view sharing or visual bulk.

Notwithstanding the exceedance of the floor space ratio control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

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6.0 The Nature and Extent of the Variation

- 6.1 This request seeks a variation to the maximum floor space ratio standard contained in Clause 4.4A(3) of RLEP.
- 6.2 Clause 4.4A(3) of RLEP specifies a maximum floor space ratio of 0.75:1 in this area of Randwick, applying to sites with an area of $\geq 300\text{m}^2$ and $\leq 450\text{m}^2$.
- 6.3 The proposed alterations to the existing dwelling will result in a floor space ratio of 0.883:1, representing a variation of 24.72m^2 or 8.3%.
- 6.4 Notably, the existing dwelling provides for a gross floor area of 344.68m^2 or a floor space ratio of 0.924:1, exceeding the gross floor area control by 64.93m^2 or 23.21%.
- 6.5 The proposed development results in a reduction in the calculable gross floor area of 40.21m^2 relative to the existing dwelling.

7.0 Relevant Caselaw

- 7.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 17. *The first and 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: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or*

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unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

7.2 The relevant steps identified in Initial Action (and the case law referred to in Initial Action) can be summarised as follows:

1. Is Clause 4.4A(3) of RLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

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8.0. Request for Variation

8.1 Is compliance with Clause 4.4A(3) unreasonable or unnecessary?

This request relies upon the first way identified by Preston CJ in Wehbe, which seeks to establish that the objectives of the standard are achieved, despite non-compliance with the standard prescribed.

Each objective of the maximum height of buildings development standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The surrounding area is predominantly characterised by residential development between one and three storeys in height.

The existing dwelling presents to the street frontage as two-storeys and is three-storeys at the rear. This two and three-storey form remains unchanged as a result of the development, although the works include new balconies and roofing.

The proposed works do not include any new gross floor area beyond the existing building footprint/envelope that would perceptibly increase the size and scale of the dwelling.

Accordingly, the objective is achieved.

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

The proposal incorporates suitable articulation and visual interest in the form of varied wall planes at the façade and northern elevation and the placement of balconies and windows.

The proposed design retains and enhances deep soil landscaping and features suitable sustainability measures.

Accordingly, the objective is achieved.

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

The proposal is not within a Heritage Conservation Area nor is it in proximity to any heritage items.

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

As noted above, the proposed development does not involve substantial works beyond the existing building footprint/envelope. The proposed works are specifically sited and designed to minimise amenity impacts to surrounding properties.

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The modest extent and scale of the new works avoids material additional building bulk that would contribute to adverse visual, overshadowing or view sharing impacts. The placement and orientation of windows and balconies ensures that there will be no unreasonable loss of privacy for adjoining properties.

Accordingly, the objective is achieved.

8.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. 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 s 1.3 of the EPA Act.*
24. *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].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

Ground 1 – Overall Reduction in FSR

Despite the exceedance of the standard, the proposed development results in a 40.21m² reduction in gross floor area relative to the existing dwelling. This reduction occurs due to the removal of the existing laundry and a small area of floor space at the north-eastern corner of the first floor, the proposed internal reconfigurations (including the introduction of a second parking space and lift) and associated redistribution of floor area within the building envelope. It is noted that the primary additional floor areas, being the plant room, laundry and bike store, are generally not visible externally.

In summary, the changes to the existing gross floor area occur within the existing building footprint and envelope, while the external or visible works, namely the new balconies, porch and roof, are not relevant to the floor space ratio standard.

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Accordingly, it is argued that the floor space ratio variation is a direct result of the existing development and is a sufficient environmental planning ground.

Ground 2 – Consistency with Surrounding Character

The proposed alterations and additions will remain compatible with the surrounding residential character in relation to bulk and scale. As noted above, the redistribution of gross floor area occurs internally within the existing footprint and envelope. The proposed development will not become visually intrusive within the context of the streetscape or the broader locality.

In summary, the resulting development will be consistent with the existing and desired character, despite the floor space ratio exceedance, because the new works are appropriately designed and sited. This consistency is a sufficient environmental planning ground.

Ground 3 – Maintenance of Residential Amenity

For the reasons discussed within the Statement of Environmental Effects, the proposal will achieve a significant enhancement in amenity for the occupants of the subject site while successfully maintaining a reasonable level of amenity for surrounding properties in relation to visual bulk, privacy, overshadowing and view sharing.

In conjunction with Grounds 1 and 2, maintenance of amenity for occupants of the subject site and surrounding properties is a sufficient environmental planning ground.

Objects of the Act

These environmental planning grounds demonstrate that the proposed development will promote the orderly and economic use of the land and represents good design and amenity of the built environment, thereby satisfying Cl 1.3(c) and 1.3(g) of the Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, specifically the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale. These are not simply benefits of the development as a whole, but are benefits relating to the breach of the maximum floor space ratio control.

It is noted that in *Initial Action*, the Court 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:

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 floor space ratio development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the floor space ratio 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.

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As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

8.3 Is the proposed development consistent with the objectives of clause 4.3 and the objectives of the R2 zone?

Section 7.1 of this written request suggests the first test in Wehbbe is made good by the development, in so far as the objectives of clause 4.3 of RLEP 2012 are satisfied.

It is considered that notwithstanding the breach of the maximum floor space ratio, the proposed development will be consistent with the individual Objectives of the R2 zone as follows:

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

Comment: The proposed development provides for the housing needs of the occupants of the dwelling.

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

Comment: Not applicable – the proposal relates to residential development.

- ***To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.***

Comment: The desired future character for detached dwelling houses in the Maroubra area considers that it is important that development reflects the scale of the existing built form and retains the low-density residential character of the locality.

The proposed additions and alterations to the existing dwelling are sensitively designed to ensure that the residential character of the area is preserved and the proposed dwelling is compatible with its neighbours and the surrounding building stock is enhanced with the improved functionality of the proposal.

- ***To protect the amenity of residents.***

Comment: The proposed development has been sensitively designed to provide for improved residential amenity for the owners through the new living spaces and also the inclusion of the additional off street carparking opportunity and proposed swimming pool.

- ***To encourage housing affordability.***

Comment: Not applicable – the proposal is for a single residential dwelling and housing affordability is not a principle design requirement within the LEP or DCP for single housing. The dwelling is within a low density residential zone and compatible with the range of uses of the neighbouring properties.

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

Comment: Not applicable – the proposal relates to residential development.

8.4 Has the Council considered the matters in clause 4.6(5) of RLEP 2012?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is specific to the design of the proposed development for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard in this particular instance.

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9.0 Conclusion

This development proposes a departure from the maximum floor space ratio standard, with the proposed new works to provide for alterations to the existing dwelling which will reduce the current floor space ratio from 0.924:1 to 0.883:1, which represents a reduction in the existing non-compliance with the floor space ratio of 23.21% to 8.83%.

The reduction in the calculable gross floor area for the development is 40.21m².

This written request to vary the maximum floor space ratio control specified in Clause 4.4A(3) of the Randwick LEP 2012 adequately demonstrates that:

- strict compliance with the standard is unreasonable or unnecessary as the objectives of the standard will be met; and
- there are sufficient environmental planning grounds to justify the departure from the standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of RLEP 2012 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 373m ² ~8m frontage	
2.4	Site coverage		
	301 to 450 sqm = 55% *Site area is measured on the overall site area (not proposed allotment areas)	Proposed = 41.8%	Yes
2.5	Deep soil permeable surfaces		
	301 to 450 sqm = 35%	Proposed = increases deep soil on site, however this control is not applicable as the proposal does not alter the site coverage by 10% of more.	NA
2.6	Landscaping and tree canopy cover		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Proposed = Site coverage change is less than 10% therefore these controls are strictly not applicable. Notwithstanding the proposal provides an upgraded landscaping to the site.	NA.
2.7	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	301 to 450 sqm = 6m x 6m	Sufficient area afforded.	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	Proposed = 0.813:1	No, see clause 4.6 assessment and key issues section of this report.
3.2	Building height		
	Building height LEP 2012 = 9.5m	Proposed = 11.24m	No see Clause 4.6 assessment and key issues section of this report.
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: - Topography	Proposed = 2.52m for first floor level. 2 storeys at street frontage. 3 storeys at rear is acceptable given the existing number of storeys at the rear is not changing.	No, however considered acceptable.

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Site orientation - Lot configuration - Flooding - Lot dimensions - Impacts on visual amenity, solar access, privacy and views of adjoining properties. 		
3.3	Setbacks		
3.3.1	<p>Front setbacks</p> <ul style="list-style-type: none"> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites - Should align with setbacks of adjoining dwellings iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front. 	Mainly ground level works forward of the existing front building line.	Yes
3.3.2	<p>Side setbacks</p> <ul style="list-style-type: none"> • Ground level: requires 900mm for the ground level • First floor level: requires 2.98m side setback for the southern side with a maximum wall height of 9.08m and 2.99m for a maximum wall height of 9.094m. 	Proposed = Ground level: 566mm First floor level: North: 2.9m South: 1.6m	No, see key issues section of this report.
3.3.3	<p>Rear setbacks</p> <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of: <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p><i>*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.</i></p> <p>Refer to 6.3 and 7.4 for parking facilities and</p>	Minimum = 8m Existing = 4.08m to 5.94m Proposed = 3.19m-4.86m	No, see key issues section of this report.

DCP Clause	Controls	Proposal	Compliance
	outbuildings.		
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension). 	Generally consistent with existing building envelope. Internal planning compliant with control requirements.	Yes – see key issues section of report with particular regard to roof design and balcony sizes
4.4	Roof terraces and balconies		
	i) Locate on stepped buildings only (not on uppermost or main roof) ii) Where provided, roof terraces must: <ul style="list-style-type: none"> • Prevent overlooking • Size minimised • Secondary POS – no kitchens, BBQs or the like • Maintain view sharing, minimise structures and roof top elements • Be uncovered and comply with maximum height iii) Locate above garages on sloping sites (where garage is on low side) <p><i>*Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential development are met.</i></p>	NA	NA
4.5	Roof design and features		
	<i>Dormers</i> i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing <i>Clerestory windows and skylights</i> v) Sympathetic to design of dwelling <i>Mechanical equipment</i> vi) Contained within roof form and not visible from street and surrounding properties.	Conditioned for satisfaction via the conversion to hipped roof form.	See key issues section of this report.
4.6	Colours, Materials and Finishes		
	i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using	Satisfactory subject to condition.	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>combination of materials and finishes.</p> <p>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</p> <p>vi) Recycle and re-use sandstone</p>		
4.7	Earthworks		
	<p>i) Excavation and backfilling limited to 1m, unless gradient too steep</p> <p>ii) Minimum 900mm side and rear setback</p> <p>iii) Subterranean spaces must not be habitable</p> <p>iv) Step retaining walls.</p> <p>v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm.</p> <p>vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)</p> <p>vii) cut and fill for POS is terraced <i>where site has significant slope:</i></p> <p>viii) adopt a split-level design</p> <p>ix) Minimise height and extent of any exposed under-croft areas.</p>	<p>Excavation below 1m for the plant room.</p>	<p>See key issues section of this report.</p>
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<p>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	<p>Compliant outcome demonstrated, noting proposal is generally consistent with existing building envelope.</p>	Yes
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. </p>	<p>Compliant outcome demonstrated, noting proposal is generally consistent with existing building envelope. Laneway provides additional separation to neighbouring development to assist in preserving solar access.</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 		
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) Living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>	BASIX certificate supplied.	Yes
5.3	Visual Privacy		
	Windows		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	Window configuration generally consistent with existing dwelling.	Yes
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	No change to existing balconies as conditioned to remove proposed extension. Street facing balcony does not generate appreciable impacts.	See key issues section of this report.
5.4	Acoustic Privacy		
	i) Noise sources not located adjacent to	Layout generally	Yes – subject

DCP Clause	Controls	Proposal	Compliance
	adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	consistent with existing dwelling and wider block. Pool pump conditioned for relocation.	to conditions.
5.5	Safety and Security		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	Configuration generally consistent with existing.	Yes
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	Refer to assessment above.	See key issues section of this report.
6	Car Parking and Access		
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	Widened to accommodate two cars in accordance with required parking rate.	Yes – subject to development engineering conditions
6.5	Garage Configuration		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m iii) Min. 5.4m length of garage iv) Max. 2.6m wall height and 3m building height (for pitched roof) for detached garages v) Recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) Minimum clearance 2.2m (AS2890.1)	Design accessed via side lane and retained within lower ground as an extension of the existing single garage.	Yes
7	Fencing and Ancillary Development		
7.1	General – Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted	No changes proposed to masonry design.	Yes

DCP Clause	Controls	Proposal	Compliance
	iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street		
7.2	Front Fencing		
	i) 1200mm max. (solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) Light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	Existing low-lying front fencing is largely retained.	Yes
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	The fencing would likely be required to be updated to reflect the nature of works in the rear yard including landscaping. A suitable note will be included in the notice of determination should consent be granted.	Yes
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. i) Pool and coping level related to site topography (max 1m over lower side of site). ii) Where pool coping height is above natural	Behind building line No tree roots appear to be impacted by the proposal. Located in rear yard adjoining other properties rear yards Pool coping is similar	Yes

D73/25

DCP Clause	Controls	Proposal	Compliance
	<p>ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties.</p> <p>iii) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full length of pool to be provided. Planting to comply with legislation for non-climbable zones.</p> <p>iv) Incorporate screening or planting for privacy as above, unless need to retain view corridors.</p> <p>v) Position decking to minimise privacy impacts.</p> <p>vi) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.</p>	<p>to existing levels. Planting is incorporated into the design of the pool. Decking is generally consistent with the existing rear yard levels. Condition requiring the pool pump and filter to be located away from the northern boundary shared with No. 13 French Street.</p>	
7.6	Air conditioning equipment		
	<p>i) Minimise visibility from street.</p> <p>ii) Avoid locating on the street or laneway elevation of buildings.</p> <p>iii) Screen roof mounted A/C from view by parapet walls, or within the roof form.</p> <p>iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.</p>	<p>None shown</p>	<p>NA</p>

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	<ol style="list-style-type: none"> Space per dwelling house with up to 2 bedrooms Spaces per dwelling house with 3 or more bedrooms <p>Note: Tandem parking for 2 vehicles is allowed.</p>	<p>2 spaces in accordance with control.</p>	<p>Yes</p>

Responsible officer: Louis Coorey, Senior Environmental Planning Officer

File Reference: DA/1009/2025

Draft Development Consent Conditions (Dwellings and Dual Occupancies)



Folder /DA No:	DA/1009/2025
Property:	13A French Street, MAROUBRA NSW 2035
Proposal:	Alterations and additions to existing part-2, part-3 storey dwelling house including demolition and replacement of upper roof, internal reconfiguration and extension of lower ground floor, reconfiguration of ground and first floors, changes to windows, construction of a new swimming pool, associated ancillary and landscaping works.
Recommendation:	Approval

D73/25

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 (including any deferred commencement conditions):

Plan	Drawn by	Dated	Received by Council
A.02 Rev 01	Richard Coskie	10/9/2025	29 September 2025
A.11 Rev 01	Richard Coskie	10/9/2025	29 September 2025
B.01 Rev 01	Richard Coskie	10/9/2025	29 September 2025
B.02 Rev 01	Richard Coskie	10/9/2025	29 September 2025
B.03 Rev 01	Richard Coskie	10/9/2025	29 September 2025
B.04 Rev 01	Richard Coskie	10/9/2025	29 September 2025
B.05 Rev 01	Richard Coskie	10/9/2025	29 September 2025
C.01 Rev 01	Richard Coskie	10/9/2025	29 September 2025
C.02 Rev 01	Richard Coskie	10/9/2025	29 September 2025
C.03 Rev 01	Richard Coskie	10/9/2025	29 September 2025
D.01 Rev 01	Richard Coskie	10/9/2025	29 September 2025
D.02 Rev 01	Richard Coskie	10/9/2025	29 September 2025
R.04 Rev 01	Richard Coskie	10/9/2025	29 September 2025

BASIX Certificate No.	Dated	Received by Council

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

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

2. **Amendment of Plans & Documentation**

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

- The pool filter and pump system shall be relocated to the southern side of the site.
- The rainwater tank and pump shall be relocated to the southern side of the site.

Condition
Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.
<p>3. Rear balconies Prior to the issue of a Construction Certificate, the architectural plans shall be amended as follows:</p> <ul style="list-style-type: none"> (a) The rear balconies at both the ground and first-floor levels shall be retained at their existing depth, with no further extension or encroachment toward the rear boundary beyond the current building alignment identified in the submitted survey plan. (b) The width of the supporting columns associated with the rear balconies shall be reduced by at least 50%. <p>Amended plans demonstrating compliance with this condition shall be submitted to and approved by the Principal Certifier prior to the issue of a Construction Certificate.</p> <p>Condition Reason: To ensure the rear balcony structures are consistent with the established side and rear setback pattern along French Street, to reduce overshadowing and visual bulk, and to maintain appropriate privacy, amenity, and character outcomes for adjoining properties. This modification ensures compliance with the objectives and performance controls of Part C1 of the Randwick Development Control Plan 2013, particularly Sections 3.2 (Building Height), 4.1 (General Building Design), and 4.3 (Setbacks), relating to bulk, scale, amenity, and visual compatibility.</p>
<p>4. Rear roof form Prior to the issue of a Construction Certificate, the architectural plans shall be amended to delete the proposed gable-ended roof form and replace it with a hipped roof design that is consistent with the existing and adjoining roof forms along the streetscape.</p> <p>The amended roof design must:</p> <ul style="list-style-type: none"> (a) The gable roof form above the rear upper level balcony shall be deleted. (b) The roof form above the rear portion of the first floor level shall be replaced with a hipped roof matching the existing roof ridge. (c) A light weight awning having maximum depth of 900mm may be provided above the full width of the window and door openings of media/guest bedroom. <p>Amended plans demonstrating compliance with this condition shall be submitted to and approved by the Principal Certifier prior to the issue of a Construction Certificate.</p> <p>Condition reason: To ensure the roof form is compatible with the established low-density character and prevailing hipped roof forms in the locality; to satisfy the objectives of Clause 4.3 (Height of Buildings) of the Randwick LEP 2012 and the design objectives and controls of Sections 3.2, 4.1, and 4.5 of Part C1 of the Randwick Development Control Plan 2013. This condition will provide a low-scale appearance that is consistent with the prevailing roofscape pattern in the area and integrate with the architectural composition and façade proportions of the approved building.</p>
<p>5. Earthworks All earthworks, excavations, footings, and retaining structures shall be carried out in accordance with the recommendations of the Geotechnical Investigation Report prepared by Green Geotechnics Pty Ltd (Report No. GG12087.001, dated 30 July 2025). A suitably qualified geotechnical engineer shall inspect and certify all foundation excavations, shoring, and retaining wall installations prior to</p>

Condition
construction certification. Condition reason: To ensure that excavation and foundation works maintain site stability, avoid adverse impacts on adjoining properties, and satisfy the objectives of Clause 6.7 of the Randwick Local Environmental Plan 2012 and Part C1 of the Randwick Development Control Plan 2013 relating to earthworks, structural safety, and environmental protection.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
6. Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation. Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
7. External Colours, Materials & Finishes 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. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development. The roof colour shall be selected closer to the 0.45 reflectivity level. The use of surfmist or similar reflectivity values will not be supported due to their light and reflectivity nuisance. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.
8. Section 7.12 Development Contributions Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$1,804,000 the following applicable monetary levy must be paid to Council \$18,040.00. The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment. To calculate the indexed levy, the following formula must be used:
IDC = ODC x CP2/CP1

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the

Condition
ABS in respect of the quarter ending immediately prior to the date of payment CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.
Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au .
Condition Reason: To ensure relevant contributions are paid.
<p>9. Long Service Levy Payments 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>
<p>10. Security Deposits The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$2000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
<p>11. Design Alignment levels 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> <p>Vehicle Access</p> <ul style="list-style-type: none"> • Match to the natural surface level of the existing concrete driveway <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</p>

Condition
plans for the construction certificate (a construction note on the plans is considered satisfactory). The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.
Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.
Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6879.
Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.
12. Design Alignment levels fee The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of \$197 (as of 1st July 2025). This amount is to be paid prior to a construction certificate being issued for the development.
Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.
13. Driveway Design 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 documentation.
Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements
14. Garage Design The gradient of the internal garage must be designed and constructed to not exceed a grade of 1 in 20 (5%) and the levels of the garage must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate documentation.
NOTE: Transitional grading of up to 1 in 8 (12.5%) is permitted internally on the garage (within 1.2m of the Little Lane boundary alignment only) to successfully transition between the garage slab and the Council issued alignment levels.
Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.
15. Stormwater Drainage Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.
The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.
Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.
16. Stormwater Drainage Installation of a grated trench drain sized for the 1% AEP storm event is required

Condition
along the garage opening to comply with flood mitigation requirements.

Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.

17. Stormwater Drainage

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

- a. Council's underground drainage system located in Little Lane; OR
- b. To the site's existing stormwater system.

Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.

18. Stormwater Drainage

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

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

Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.

19. Sydney Water

All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Tap in™ service provides 24/7 access to a range of services, including:

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

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

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

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

20. Building Code of Australia

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and*

Condition
<p><i>Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>21. BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>22. Excavation Earthworks and Support of Adjoining Land</p> <p>Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
<p>23. Building Code of Australia – Swimming Pools</p> <p>Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the <i>Building Code of Australia</i> and be provided with a child-resistant barrier in accordance with the <i>Swimming Pools Act 1992</i>; the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).</p> <p>Details of compliance are to be provided in the Construction Certificate.</p> <p>Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.</p> <p><i>Note: This development consent does not approve the design and location of swimming/spa pool safety barriers. Swimming/spa pool safety barriers are required to comply with the Swimming Pools Act 1992, Swimming Pools Regulation 2018 and relevant Standards. Details of compliance are required to be included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development.</i></p> <p>Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area.</p>
<p>24. Swimming Pool Safety</p> <p>Swimming pools are to be designed, installed and operated in accordance with the</p>

Condition
following general requirements:
<ul style="list-style-type: none"> • Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation. • Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance. • Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems. • Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.
Condition Reason: To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area.

BEFORE BUILDING WORK COMMENCES

Condition
25. Building Certification & Associated Requirements
The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:
<p>a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <p>b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and</p> <p>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</p> <p>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</p> <p>e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</p>
Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.
26. Home Building Act 1989
In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i> , in relation to residential building work, the

Condition
requirements of the <i>Home Building Act 1989</i> 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.

27.

Dilapidation Reports

A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified person to the satisfaction of the appointed Registered Certifier for the development, in the following cases:

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the zone of influence of the footings of any dwelling, associated garage or other structure located upon an adjoining premises;
- demolition or construction of new dwellings; additions to dwellings or outbuildings, which are sited up to or less than 900 mm from a site boundary (e.g. a semi-detached dwelling, terraced dwelling or other building sited less than 900mm from the site boundary);
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises; and
- as may be required by the Principal Certifier for the development.

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

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

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

28.

Construction Site Management Plan

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

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

Condition
<ul style="list-style-type: none"> • provisions for temporary sanitary facilities measures to be implemented to ensure public health and safety. <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
<p>29. Construction Site Management Plan</p> <p>A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
<p>30. Construction Noise & Vibration Management Plan</p> <p>Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.</p> <p>A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
<p>31. Public Utilities</p> <p>A Public Utility Impact Assessment must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
<p>32. Public Utilities</p> <p>The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>

DURING BUILDING WORK

Condition

Condition	
33. Site Signage	<p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ul style="list-style-type: none"> a) showing the name, address and telephone number of the principal certifier for the work, and b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and c) stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ul style="list-style-type: none"> a) maintained while the building work is being carried out, and b) removed when the work has been completed. <p>This section does not apply in relation to—</p> <ul style="list-style-type: none"> 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.
	<p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>

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

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

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

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

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

Condition
Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Notes:

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

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

36. Public Safety & Site Management

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.
- g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.

Condition
i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

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

37. Excavations and Support of Adjoining Land

The adjoining land and buildings located upon the adjoining land must be adequately supported at all times and in accordance with section 74 of the Environmental Planning and Assessment Regulation 2021 and approved structural engineering details.

Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

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

38. Building Encroachments

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

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

39. Survey Report

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

- prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,
- prior to construction (pouring of concrete) of new floor levels,
- prior to issuing an Occupation Certificate, and
- as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.

Condition Reason: To ensure compliance with approved plans.

40. Road / Asset Opening Permit

A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.

Condition

For further information, and access to the Asset Opening Permit application form please visit Councils website at

<https://www.randwick.nsw.gov.au/services/roads/road-and-footpath-excavations>

or ring the call centre on 1300 722 542

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

41.

Ausgrid Power Feed Connection

Should the existing overhead power feed from the Ausgrid Power Pole need to be reconnected to the site during any stage of building works it is to comply with either of the following methods:

- a) From the power pole directly to the façade of dwelling/s, similar to the existing connection, to the satisfaction of Ausgrid
- b) Relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground (UGOH) connection (No Private Pole is to be provided). These works are to be to Ausgrid requirements.

Note: A temporary private power pole at the front of the site is permitted during construction but must be removed at the completion of works. The applicant is to liaise with an Ausgrid Accredited Service Provider to carry out the works as mentioned above at their own expense to the satisfaction of Ausgrid and the Principal Certifier.

Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

42.

Occupation Certificate Requirements

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

Condition reason: Statutory requirement. To ensure the site is authorised for occupation.

43.

BASIX Requirements

In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.

Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.

Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.

Condition	
44.	Council's Infrastructure, Vehicular Crossings, street verge The applicant must meet the full cost for a Council approved contractor to extend the existing concrete vehicular crossing opposite the vehicular entrance to the site to Council's specifications and requirements. Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
45.	Council's Infrastructure, Vehicular Crossings, street verge The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway. Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
46.	Council's Infrastructure, Vehicular Crossings, street verge 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: <ul style="list-style-type: none"> a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval. c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing. Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
47.	Council's Infrastructure, Vehicular Crossings, street verge That part of the nature-strip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense. Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public landscaping.
48.	Stormwater Drainage The applicant shall submit to the Principal Certifier and Council, certification from a

Condition
<p>suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.</p>
<p>49. Undergrounding of Power The Principal Certifier shall ensure that all power supply to the development site has been provided as an underground (UGOH) connection from the nearest main pole in French Street, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. All private poles must be removed prior to the issuing of an occupation certificate, unless otherwise approved in writing by Council's Development Engineering Coordinator.</p> <p>Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.</p>
<p>50. Street and/or Sub-Address Numbering Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.</p> <p>If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.</p> <p><i>Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.</i></p> <p>Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.</p>
<p>51. Swimming Pool Safety Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the <i>Swimming Pools Act 1992</i>; the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).</p> <p>Condition reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.</p>
<p>52. Swimming Pool Safety A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the <i>Swimming Pools Regulation 2018</i>, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.</p> <p>Condition reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.</p>
<p>53. Swimming Pool Safety The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the <i>Swimming Pools Act 1992</i>. The Swimming Pool Register is administered by the NSW Government and</p>

Condition
registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au .
Registration must be made prior to the issue of an Occupation Certificate for the pool and a copy of the NSW Swimming Pool Certificate of Registration must be forwarded to the Principal Certifier and Council accordingly.
Condition reason: To ensure registration of the swimming pool/spa in accordance with relevant legislation.
<p>54. Post-construction Dilapidation Report 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. The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> (a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and (b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>

OCCUPATION AND ONGOING USE

Condition
<p>55. External Lighting 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>
<p>56. Waste Management Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.</p> <p>Condition Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste.</p>
<p>57. Plant & Equipment Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>

DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES

Condition
<p>58. Demolition Work</p> <p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <p class="list-item-l1">a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.</p> <p class="list-item-l1">b) The Demolition Work Plan must include the following details (as applicable):</p> <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials containing asbestos) • Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) • Measures and processes to be implemented to ensure the health & safety of workers and community • Measures to be implemented to minimise any airborne dust and asbestos • Methods and location of disposal of any hazardous materials (including asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish.

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.

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.

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.

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

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

DURING DEMOLITION WORK

Condition
<p>59. Demolition Work</p> <p>Any demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard - AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of</p>

Condition
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:
<ul style="list-style-type: none">• A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),• Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations• A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",• Council is to be given at least two days written notice of demolition works involving materials containing asbestos,• Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,• A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works.

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. D74/25

Subject: 10 Blenheim Street, Randwick (DA/941/2025)

Executive Summary

Proposal: Amending Development Application seeking consent for an additional three (3) residential storeys resulting in an eight storey building comprising 25 residential apartments (13 additional), changes to ground floor commercial (health services) premises and basement car parking. The proposal includes a range of design, structural, and building compliance revisions to the previously approved development under DA/352/2019.

Ward: West Ward

Applicant: Charles Fortin

Owner: Jofilo Pty Ltd

Cost of works: \$2 277 658.00

Reason for referral: Development to which Chapter 4 of the SEPP (Housing) 2021 applies

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 941/2025 for Amending Development Application seeking consent for an additional three (3) residential storeys resulting in an eight storey building comprising 25 residential apartments (13 additional), changes to ground floor commercial (health services) premises and basement car parking. The proposal includes a range of design, structural, and building compliance revisions to the previously approved development under DA/352/2019 at No. 10 Blenheim Street, Randwick, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act 1979*, the Application fails to comply with the following environmental planning instruments:
 - The Application does not satisfy the following ADG controls as prescribed by *SEPP (Housing) 2021*:
 - 3D-1 - Communal and public open space;
 - 3F-1 - Visual privacy;
 - 3J-1 - Bicycle and car parking;
 - 4D - Apartment size and layout;
 - 4E - Private open space and balconies; and
 - 4G – Storage.
2. The Application does not satisfy the requirements of chapter 2 of *SEPP (Biodiversity and Conservation) 2021*, noting the proposal does not protect the biodiversity values of trees and other vegetation in non-rural areas of the State or preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
3. The Application does not satisfy the requirements of chapter 4 of *SEPP (Resilience and Hazards) 2021* and has not demonstrated that the site is suitable for the proposed development in terms of potential contamination.
4. The Application does not satisfy the *Randwick Local Environmental Plan 2012* 1.2 *Aims of the Plan* 2 (a) & (d) or the objectives of the R3 zone as Council is not satisfied the housing needs of the community will be met in a manner satisfactory to their amenity and the amenity of the

D74/25

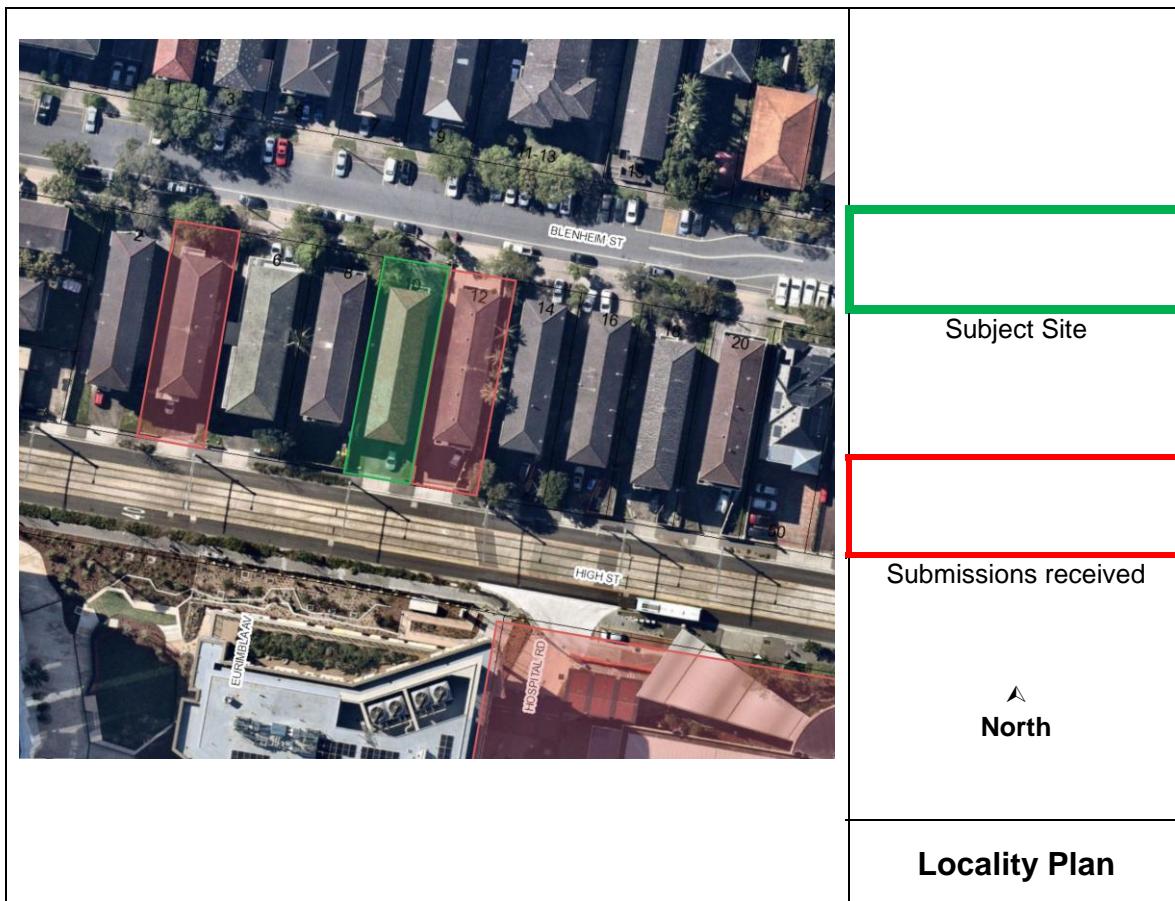
surrounding locality. The Application is further considered inconsistent with the desired future character of the locality.

5. The proposal has failed to demonstrate a satisfactory outcome in accordance with the requirements and objectives of Clause 5.10 Heritage Conservation of the Randwick LEP 2012.
6. The proposal has failed to demonstrate a satisfactory outcome in accordance with the requirements and objectives of Clause 6.11 Design Excellence of the Randwick LEP 2012.
7. Pursuant to Section 4.15(1)(a)(iii) of *Environmental Planning and Assessment Act 1979*, the Application does not comply with the following provisions under *Randwick Comprehensive Development Control Plan 2023*:
 - Part B6: Recycling and Waste Management
 - Part B8: Water Management
 - C2 Medium Density Residential:
 - 2.3.2 Communal open space;
 - 5.3 Visual privacy; and
 - 5.8 safety and security.
 - E7 Housing Investigation Area:
 - Part A
 - 3. Design excellence
 - 5. Built form
 - 8. Heritage conservation.
 - Part B - 9.2 High Street HIA
 - 9.2.3 Built form
 - 9.2.4 Public domain and access
 - 9.2.5 Individual city block plans
 - Part C
 - 10. Housing Mix
 - 13. Acoustic amenity
 - 15. Articulation and Modulation
 - 16. Materials and Finishes
 - 17. Building awnings, entry and circulation
 - 18. Landscaped area
 - 19. Transport, parking and access
 - 20. Sustainability and waste management

8. The proposal has not demonstrated compliance with AS/NZS 2890.1:2004 in relation to the minimum width for off-street car spaces.
9. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts from the Application as detailed in this report are considered unacceptable.
10. Pursuant to Section 4.15(1)(c) of *Environmental Planning and Assessment Act 1979*, the Subject Site is not considered suitable for the proposed development and has not demonstrated that it is capable of facilitating the extent of development sought.
11. Pursuant to Section 4.15(1)(d) of *Environmental Planning and Assessment Act 1979*, the public submissions identify the unsuitability of the Application for the locality.
12. Pursuant to the provisions of section 4.15(1)(e) of *Environmental Planning and Assessment Act 1979* and for the reasons detailed throughout this report, Council is not satisfied that the development is in the public interest.

Attachment/s:

Nil



1. Executive summary

This report will assess DA/941/2025 (*the Application*) for 10 Blenheim Street, Randwick (*the Subject Site*) against the relevant heads of consideration under Section 4.15 of *Environmental Planning & Assessment Act 1979* (*the Act*).

The Application is referred to the Randwick Local Planning Panel (*RLPP*) as it is development to which Chapter 4 *State Environmental Planning Policy (SEPP) (Housing) 2021* applies.

The Application seeks development consent for construction of an eight storey mixed use building, comprising 25 residential apartments and ground floor health services facility.

The Application is an 'amending' development application, which seeks to provide an additional three storeys to a previous five storey approval via DA/352/2019. Other changes such as internal rearrangements are also sought through the Application.

The key issues associated with the proposal relate to:

- Insufficient amenity and locality impact;
- Failure to achieve design excellence;
- Inconsistency with the aims of SEPP (Housing) 2021;
- Future Solar access impacts; and
- High Street block plan inconsistency.

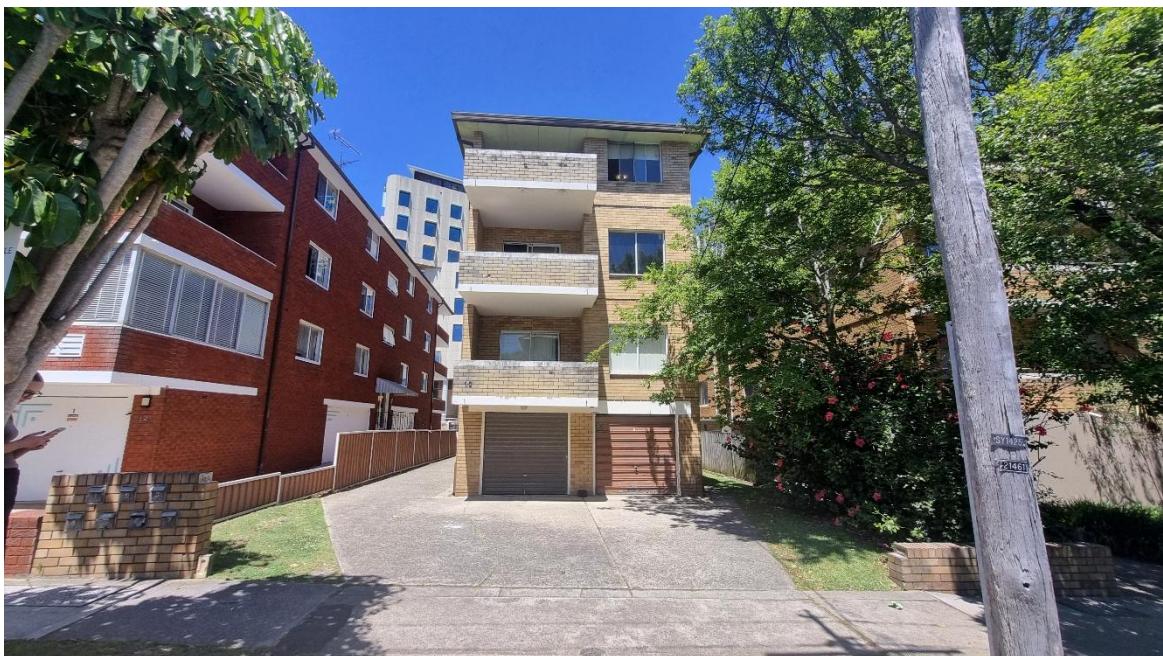
This report finds the Subject Site unsuitable for the development proposed and that the Application would not be in the public interest. Accordingly, it is therefore recommended for refusal.

2. Site Description and Locality

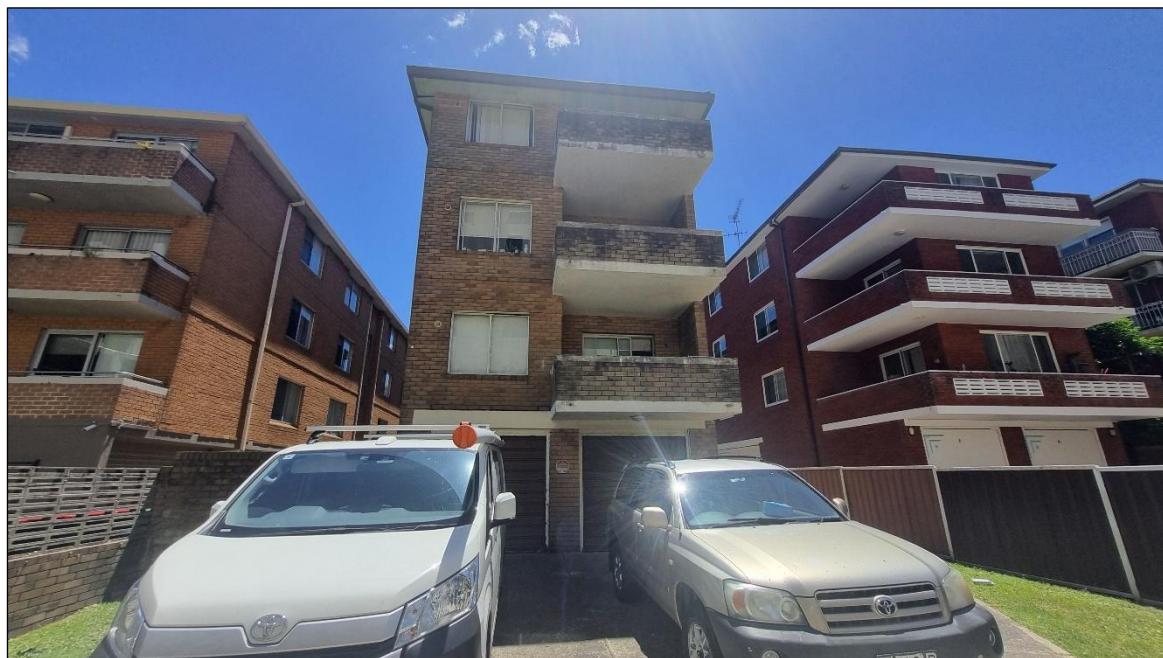
The Subject Site is located at 10 Blenheim Street Randwick and is legally identified as Lot 50 in Deposited Plan 4642 (being Lots 1-6 in Strata Plan 33835).

The Subject Site is regular in shape and measures by survey 490.1sqm. It has dual 12.9 metre frontages to High and Blenheim Street. The site topography is generally flat.

The Subject Site is improved by an existing four storey residential flat building, approved circa 1970. It presently accommodates six apartments with six ground floor garages. Each apartment is afforded a balcony, each with three to Blenheim and High Street respectively.



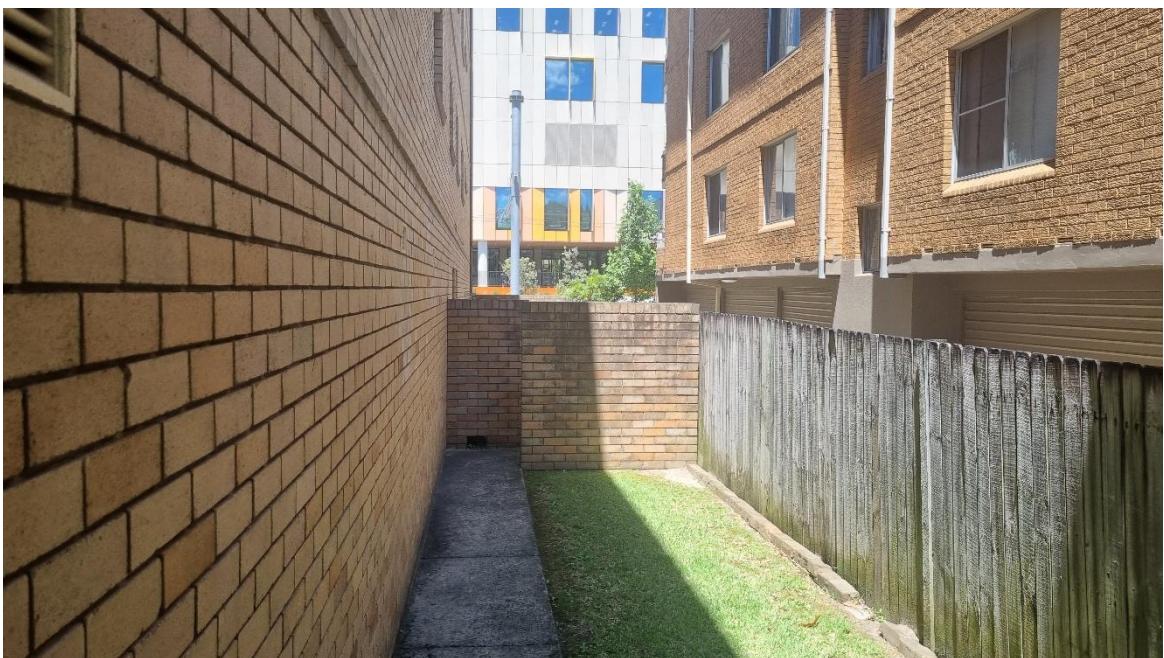
• **Figure 1** – Subject Site from Blenheim Street (source: Assessing Officer)



• **Figure 2** – Subject Site from High Street (source: Assessing Officer)



- **Figure 3** – Subject Site eastern setback toward High Street (source: Assessing Officer)



- **Figure 4** – Subject Site from western setback toward High Street (source: Assessing Officer)

The character of the surrounding area around Blenheim Street is predominantly four storey residential flat buildings (RFB). Those RFB's appear to be older stock, likely approvals circa 1970. The character of High Street is differentiated through the adjacent Hospital/UNSW precinct.

D74/25



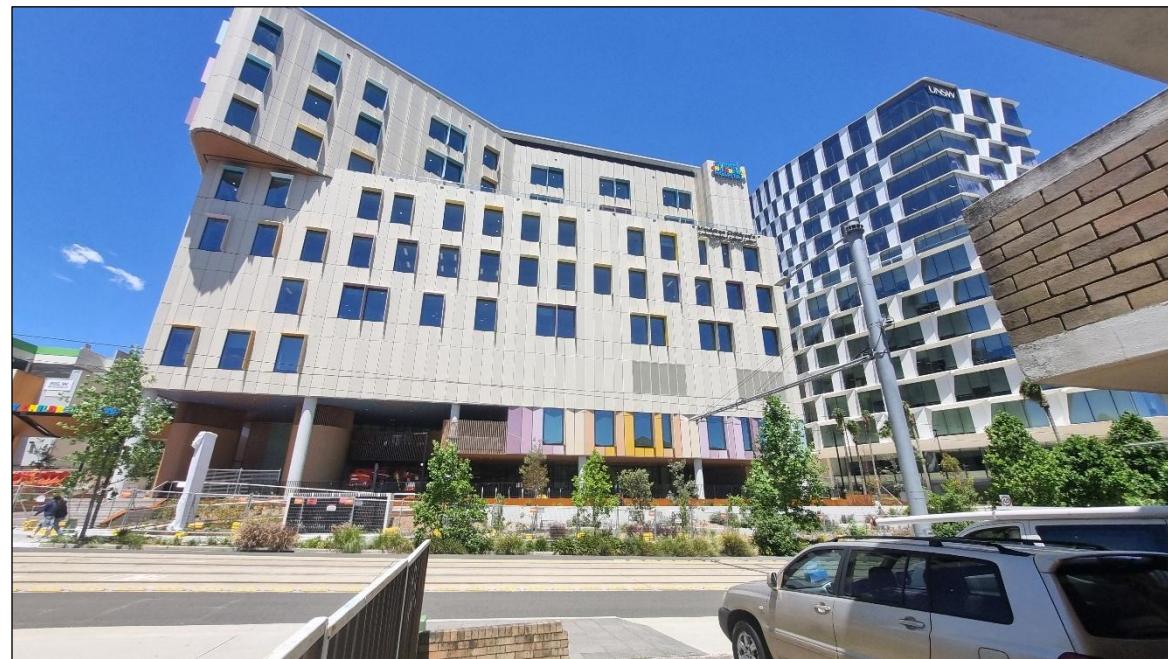
- **Figure 5** – Subject Site (centre) and adjoining properties (source: Assessing Officer)



- **Figure 6** – Subject Site (rightmost) and adjoining properties (source: Assessing Officer)



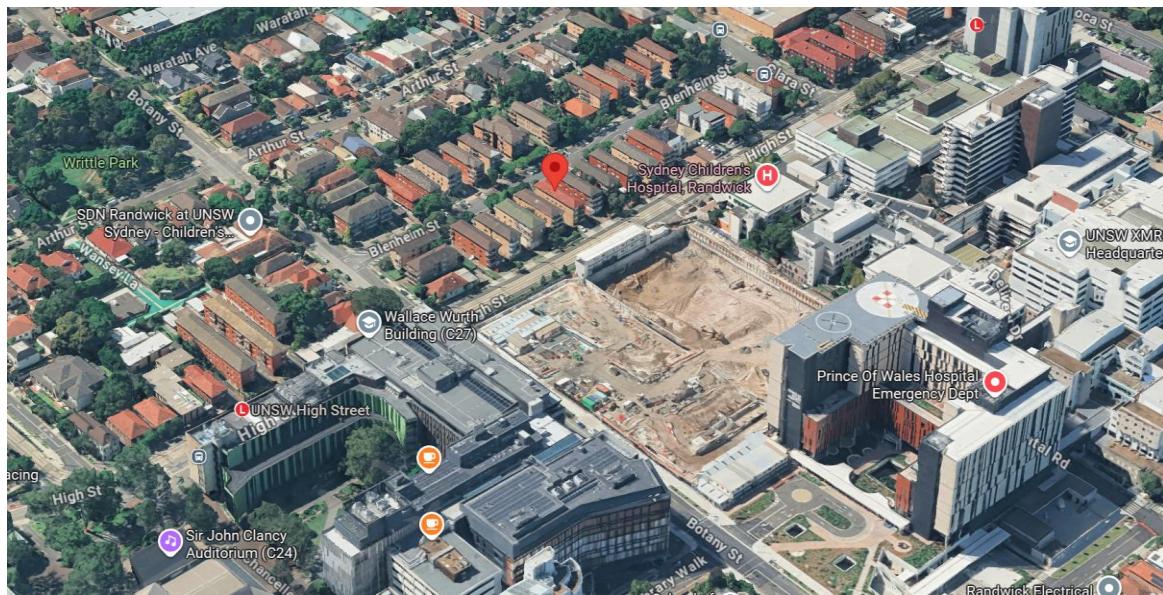
- **Figure 7 – Blenheim Street facing west (source: Assessing Officer)**



- **Figure 8 – High Street adjacent development (source: Assessing Officer)**

High Street accommodates the Light Rail public transport rail corridor. The Subject Site is within 200 metres walking distance of the UNSW High Street Station and 300 metres of the Randwick Station. Randwick Junction Centre is located within similar walking distance and provides suitable access to the immediate needs of surrounding residents.

D74/25



• **Figure 9** – Subject Site (red marker) and surrounding development (source: google maps globe view)

3. Relevant history

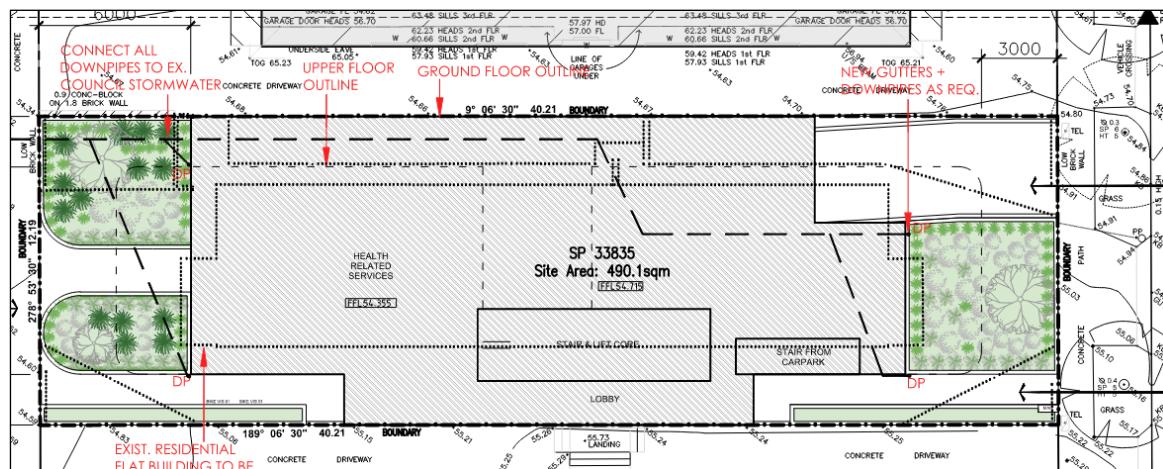
DA/22/1969 was determined on 4/02/1969 (per Council's online records) for construction of a six unit residential flat building.

DA/352/2019 was refused by the Randwick Local Planning Panel on 10 December 2020.

DA/352/2019 sought “Demolition of existing structures, construction of 5 storey building comprising ground floor health services facility, 17 dwelling on four upper levels, 3 carpark spaces at ground level, landscaping and associated works.”

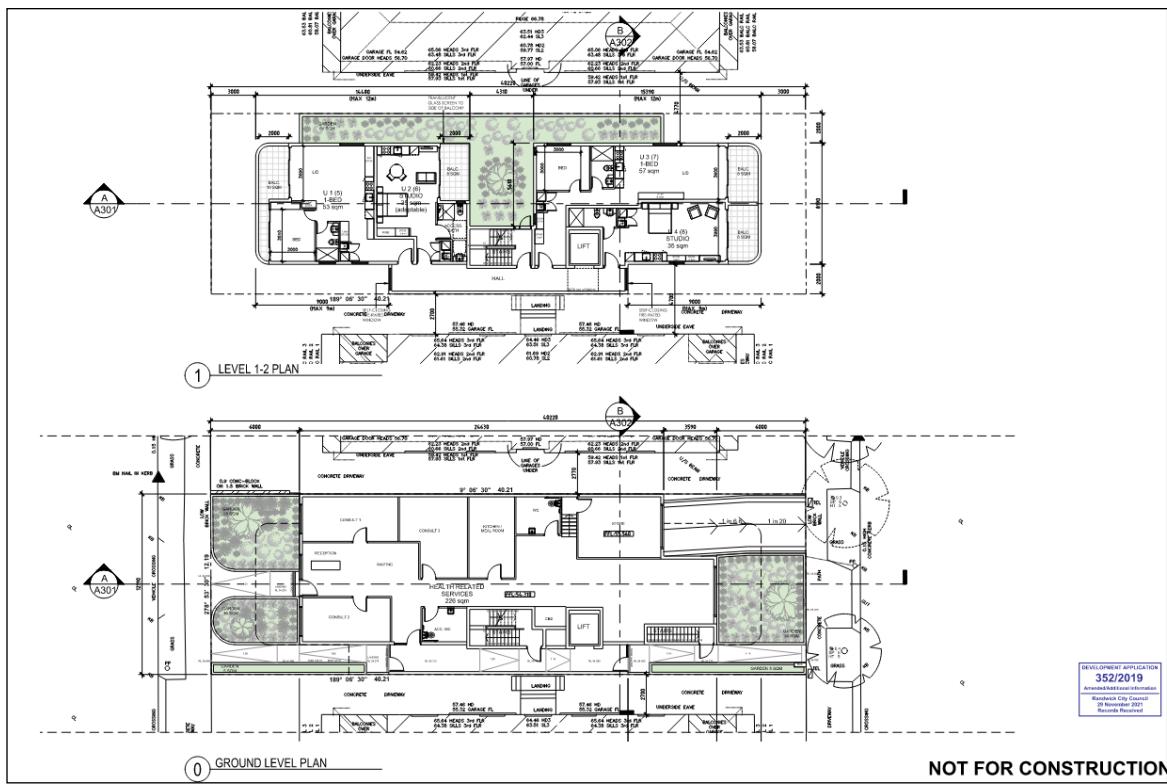
DA/352/2019 was later the subject of a class 1 appeal through the Land and Environment Court which was upheld on 30 December 2021 by Pullinger AC. Consent was granted for

“Demolition of the existing structures and the construction of a 4-storey (with habitable roof space) mixed use development comprising of a residential flat building containing 12 apartments with a health service facility on the ground floor and basement parking”

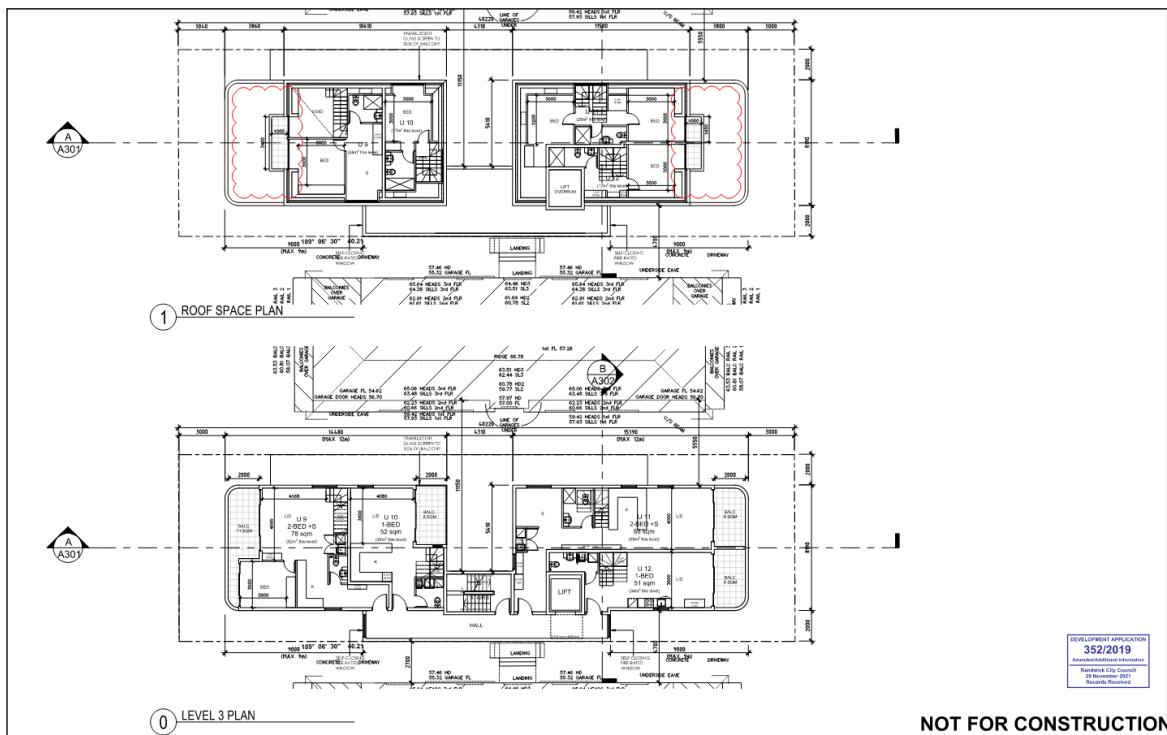


• **Figure 10** – Approved site plan (DA/352/2019)

D74/25

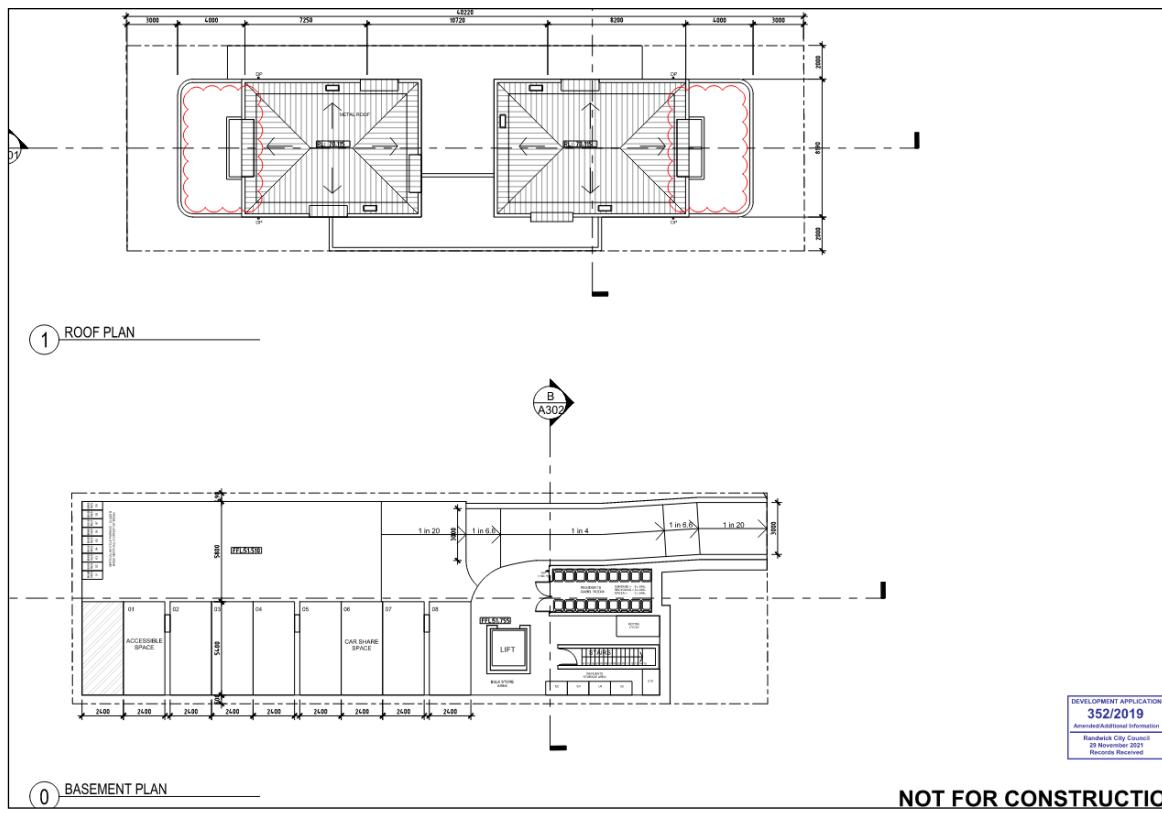


- Figure 11 – Approved ground, level 1, and 2 plan (DA/352/2019)

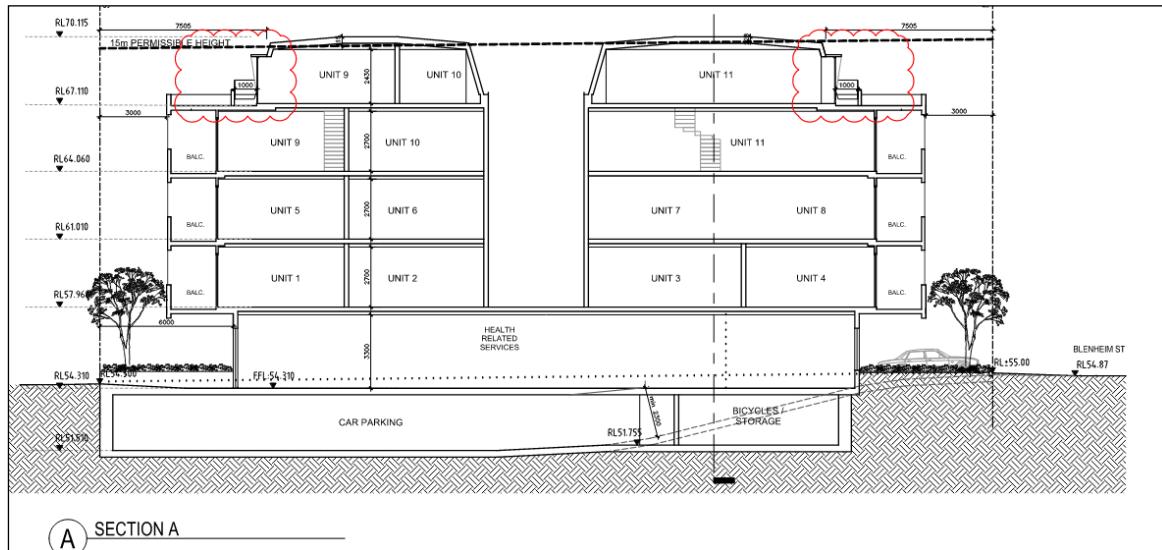


- Figure 12 – Approved level 3 and roof space plan (DA/352/2019)

D74/25

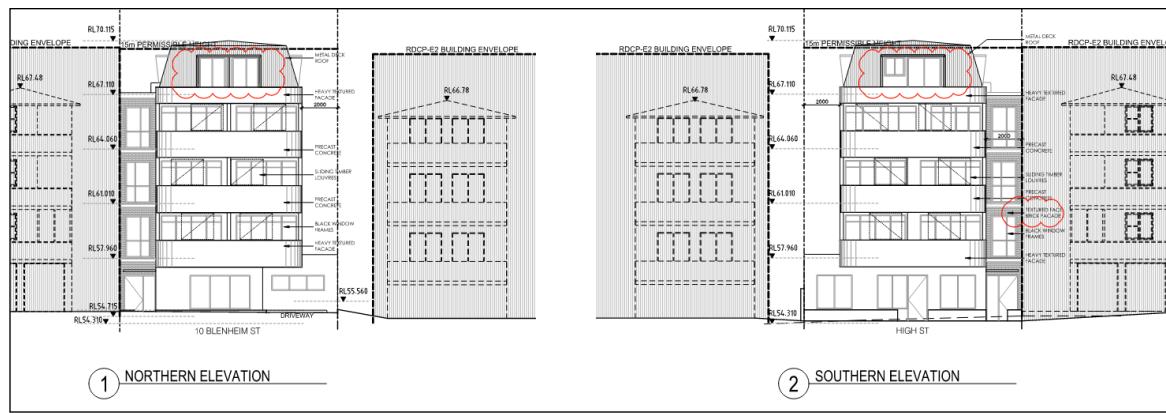


- **Figure 13** – Approved basement and roof plan (DA/352/2019)

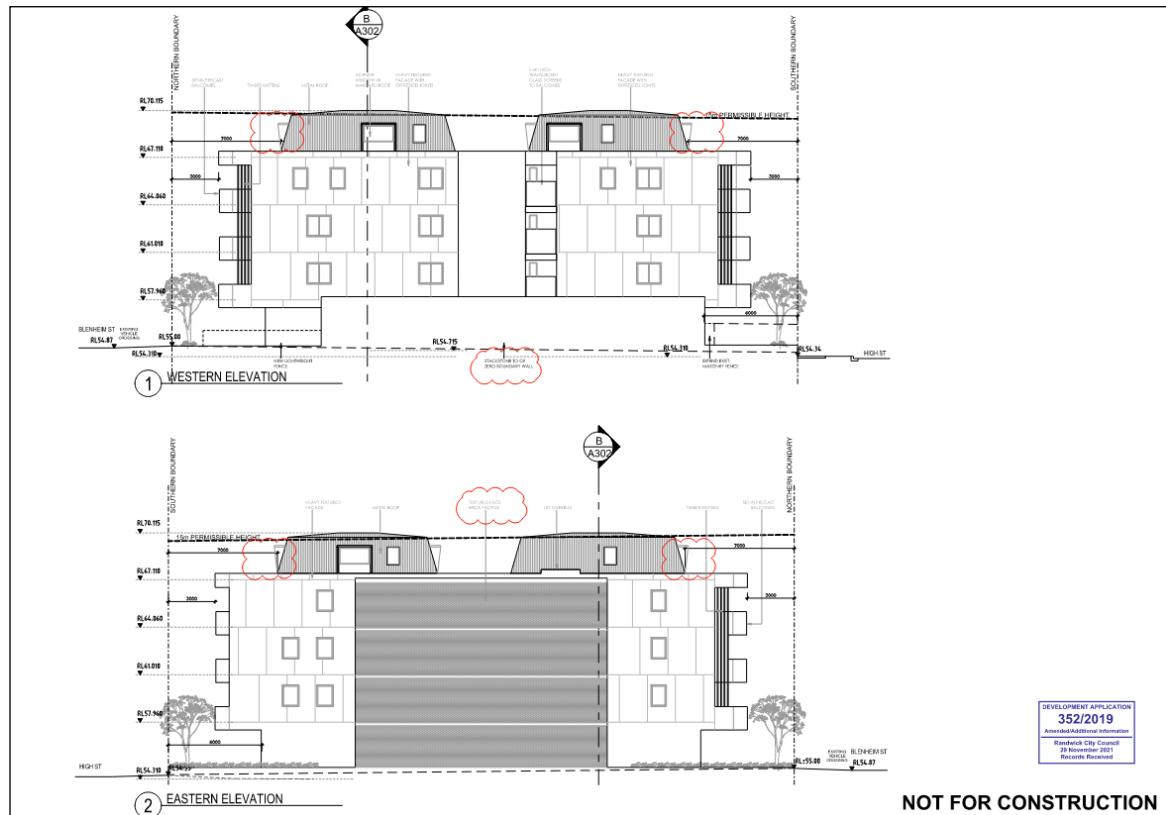


• **Figure 14** – Approved Section A (DA/352/2019)

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- **Figure 15** – Approved northern and southern elevation (DA/352/2019)



- **Figure 16** – Approved west and east elevations (DA/352/2019)

4. The Application

The Application is an amending development application, which seeks to rely on DA/352/2019.

DA/352/2019 was determined via the Land and Environment Court and approved “*Demolition of the existing structures and the construction of a 4-storey (with habitable roof space) mixed use development comprising of a residential flat building containing 12 apartments with a health service facility on the ground floor and basement parking.*”

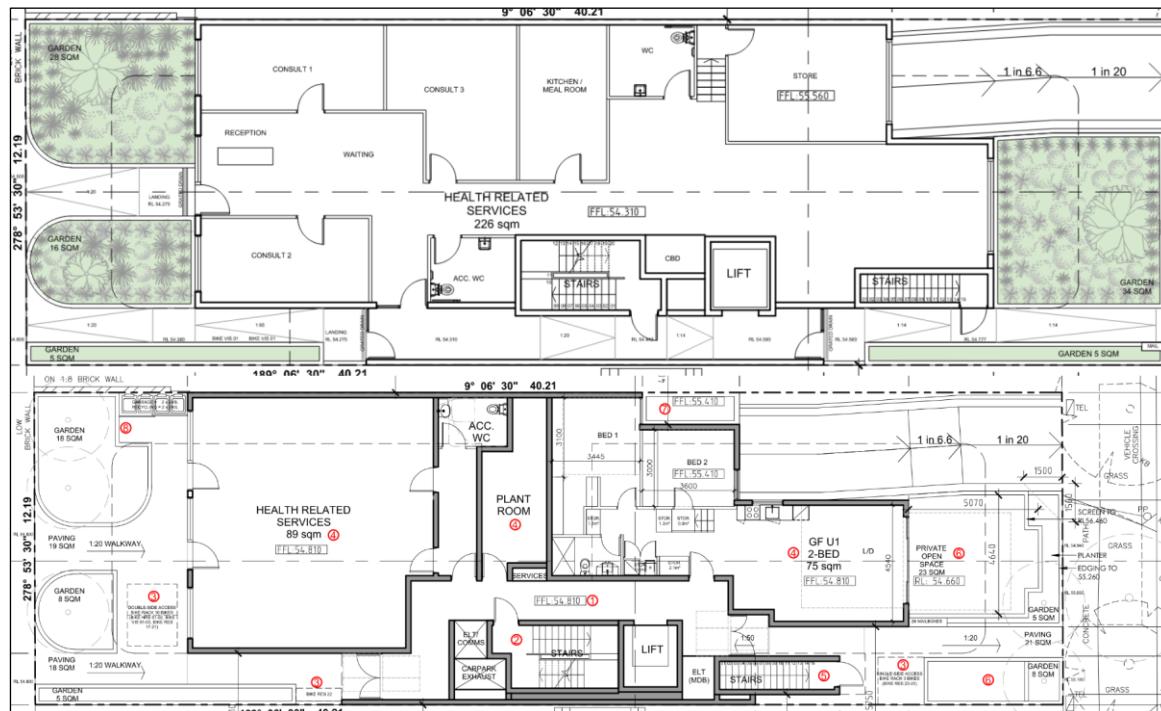
The Application seeks to provide three additional storeys to provide 13 additional apartments, increasing the total apartments on the site to become 25. Other internal changes are also sought, as outlined below.

In detail the proposal is seeking consent for the following:

- 8 Storey Residential flat building comprising 25 units with one level of basement parking;
 - Basement parking to remain as approved under DA/352/2019;
 - Single lift core servicing all levels including basement;

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- Ancillary landscaping and planting;
- Amendment to the ground floor layout approved under DA/352/2019 (see below **Figure 17**);
- Minor amendments to the layout of units approved under DA/352/2019;
- Rearrangements to the internal circulation and services approved under DA/352/2019, including:
 - Stair and lift relocation; and
 - Exhaust and service relocation.



- **Figure 17 – DA/352/2019 & DA/941/2025 ground floor layouts**

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.

Seven (7) submissions were received during the notification period as follows:

- Requested to remain anonymous submitted (x2);
- 2 Creer Street, Randwick (the occupier);
- 4 Blenheim Street, Randwick (c/o PSMG Strata);
- 12 Blenheim Street, Randwick (c/o iObject);
- Sydney Children's Hospital; and
- 4/4 Clara Street (the occupier).

Issue	Comment
1. Amenity impacts via height, traffic impacts, noise, shadows, privacy. Application is not in the public interest.	1. See key issues and relevant control assessments within this report.
2. Submitted clause 4.6 is insufficient.	2. See 4.6 request within this report.
3. Application does not comply with clause 6.7 of RLEP. Side setbacks are insufficient.	3. Clause 6.7 relates to foreshore scenic protection area which the Subject Site is not within. Side setbacks assessed within this report.

Issue	Comment
4. Clause 6.27 of RLEP non-compliance. In HIA 3. Concerns of site isolation and redevelopment potential of surrounding properties.	4. Clause 6.27 related to affordable housing contributions. The submission references this clause with concern relating to site isolation. Incorrect clause and HIA area appear to be referenced. Application not considered to isolate any surrounding sites.
5. Traffic Report is insufficient.	5. See engineering comments.
6. Amending DA is not appropriate and potentially sought to avoid notification.	6. Application notified consistent with community engagement strategy.
7. Refusal or redesign requested.	7. See recommendation.
8. Concern raised with advertising sign being taken down during exhibition period and if Randwick's Community Engagement Strategy had been followed. Request for extension of notification period.	8. Sign was replaced by Council shortly following this submission. All submissions received during the course of assessment were taken into consideration. Extension granted notwithstanding.
9. Concerns of off-street parking availability in the locality and request for additional spaces to be provided.	9. Addressed in this report. Proposed parking unsatisfactory.
10. Concerns of bulk and scale. Application is out of character with the area.	10. Addressed under relevant controls in this report including DEAP.
11. Urban design outcome is poor. Reference made to relevant Council controls and objectives. Impacts to neighbours as a result of this. Block plan inconsistencies. Desired future character impacts.	11. Urban design considered by DEAP. Council's considered impacts assessed within this report under relevant controls. See those controls and key issues. Block plan assessed in DCP table and key issues. Desired future character considered where relevant in this report.
12. Submitted SEE is insufficient and inaccurate. Detail provided of instances where the submission disagrees with the applicant's SEE.	12. Noted.
13. Setbacks are insufficient. DCP and ADG noncompliances. Insufficient building separation. Amenity impacts as a result of setbacks.	13. Setbacks, separation, and amenity considered under relevant controls and key issues.

Issue	Comment
14. Solar access concerns. DCP and ADG controls referenced. Loss of solar access to neighbouring development.	14. Solar access assessed under relevant controls and key issues.
15. Solutions proposed to remedy issues identified by the iObject submission.	15. Noted.
16. Overlooking concerns towards Sydney Children's Hospital.	16. Children's Hospital is located approximately 50 metres from the Subject Site. Suitable separation provided to the extent that privacy impacts are not a concern with regard to the children's hospital.

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 – Part 3 Retention of Existing Affordable Rental Housing

Section 46 – Buildings to which Part applies

Pursuant to subsection (1) of section 46, Part 3 of the Housing SEPP applies to low-rental residential buildings on land in the Greater Sydney Region. Pursuant to subsection (2), Part 3 does not apply to a building approved for subdivision under the [Strata Schemes Development Act 2015](#).

The Subject Site is presently strata subdivided and so Chapter 2 Part 3 of SEPP Housing 2021 does not apply.

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 development for the purpose of substantial redevelopment of an approved residential flat building which is more than four storeys and contains more than four dwellings.

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 (DEAP)

The DEAP functions as design review panel for the purposes of Chapter 4 of the Housing SEPP.

The Application was referred to the DEAP for advice concerning the design quality of the development. The panel advised that the development was unsatisfactory.

“The Panel accepts the applicants’ desire to provide additional residential accommodation, taking advantage of the uplift inherent in the HIA-driven block plans. However, residential accommodation is not simply unit count – each unit drives a corresponding demand for amenity throughout the building. This has not increased in any way, despite the unit count doubling, further compounding amenity metrics that were already substandard.

The Panel suggests a reduction of unit numbers to deliver some of the requisite amenity, and look forward to reviewing the proposal again.”

The detailed comments provided by the DEAP are provided at the Referrals section of this report.

Design Quality Principles

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

Apartment Design Guide

The table below provides an assessment of the Application against the relevant design criteria contained in Parts 3 and 4 of the 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.	122.5sqm required. No communal open space provided. DA/352/2019 was approved with no communal open space. Insufficient amenity exacerbated by the subject Application.	No
3E-1	Deep Soil		
	Deep soil zones are to meet the following requirements: No dimension minimum (less than 650sqm). 7% site area.	34.3sqm required. 44sqm proposed (8.9%). Artificial turf proposed in landscape plan in area where deep soil is identified in architectural drawings. 7sqm deep soil lost via this.	N/A – no communal space to receive solar access Yes

Clause	Design Criteria	Proposal	Compliance													
		Total resultant deep soil 37sqm (7.5%).														
3F-1	Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable Rooms and Balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>4.77m west elevation 4.7m east elevation</p> <p>Partial 2.7m separation from eastern boundary. That area provides no windows.</p> <p>Proposed separation approved under DA/352/2019 for those dwellings has been maintained for the new dwellings sought in the Application via straight extrusion and there is no attempt to comply with the requirements of the control.</p> <p>Privacy interface inadequate.</p>	No
Building Height	Habitable Rooms and Balconies	Non-habitable rooms														
Up to 12m (4 storeys)	6m	3m														
Up to 25m (5-8 storeys)	9m	4.5m														
Over 25m (9+ storeys)	12m	6m														
3J-1	Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400 metres of land zoned, B3 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>The Subject Site is within 800 metres of a light rail stop.</p> <p>The Application maintains the parking approved under DA/352/2019, being 12 spaces (6 + 1 accessible + 1 carshare space – equivalent to 5).</p> <p>The Application seeks to increase total dwellings to 25.</p> <p>Minimum carparking for 25 units is 17.4 under the Guide to Traffic Generating</p>	No												

Clause	Design Criteria	Proposal	Compliance
		<p>Development control, rounded down to 17.</p> <p>Minimum carparking for 25 units under RDCP 2013 Chapter E7 is 16.8, rounded up to 17.</p> <p>17 is therefore the required parking.</p> <p>Shortfall of 5 spaces.</p> <p>Bike parking subject to RDPC 2013.</p>	
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>Diagrams indicate suitable solar access to development.</p> <p>Future solar access concerns are raised for apartments which face High Street. Likely that redevelopment of neighbouring sites will result in complete loss of solar access for half the proposed site.</p> <p>See key issues.</p>	<p>Yes – however future concerns.</p> <p>See key issues.</p>
4B	Natural Ventilation		
	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p>	<p>100% of units cross ventilated.</p>	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Does not exceed.	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>2.7m minimum met for all units.</p>	Yes

Clause	Design Criteria	Proposal	Compliance
	These minimums do not preclude higher ceilings if desired.		
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>All apartments and rooms comply with minimum internal areas.</p>	Yes
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Ground floor Unit 1 insufficient at 6.8m glass area. 7.5m required.</p> <p>FF U3 insufficient at 3m glass area. 3.7m needed.</p> <p>U 7/11/15/19 insufficient at 3m glass area. 3.7m needed.</p>	No
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	All 25 units are open plan. Refer below.	See below – open plan
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	All dwellings comply.	Yes
	<p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p>	<p>No master bedrooms proposed.</p> <p>All proposed dwellings with bedrooms meet 9sqm minimum.</p>	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All dwellings comply.	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 	All units comply.	Yes

Clause	Design Criteria	Proposal	Compliance															
	<ul style="list-style-type: none"> 4m for 2 and 3 bedroom apartments 																	
	<p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>Level 1 unit 2 partial 2500mm width.</p> <p>Level 1 units 4 and 5 are 3790mm and 3800mm respectively.</p> <p>Levels 2-5 units 6/10/14/18 partial 2500mm width.</p> <p>Levels 2-5 units 8/12/16/20 3790mm width.</p> <p>Levels 2-5 units 9/13/17/21 3800mm width.</p>	<p>No</p>															
4E	Private open space and balconies																	
	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4 m²</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8 m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10 m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m	<p>Level 1 unit 2</p> <p>Level 2-5 units</p> <p>6/10/14/18</p> <p>Provide a 10sqm balcony, 7sqm of which are at a depth of 2m.</p> <p>All other units comply.</p>	<p>Partial non-compliance</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>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 15m² and a minimum depth of 3m.</p>	<p>23sqm provided for ground floor unit.</p>	<p>Yes</p>															
4F	Common Circulation and Spaces																	
	<p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>No more than 4 units per level.</p>	<p>Yes</p>															
	<p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>N/A</p>	<p>N/A</p>															
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>Ground floor unit 1 – 7.4m3. 5m3 of that in that unit. Shortfall by 0.6m3</p> <p>U 9/13/17/21 studio – 3.4m3 provided. Shortfall by 0.6m3</p>	<p>No</p>															

Clause	Design Criteria	Proposal	Compliance
	At least 50% of the required storage is to be located within the apartment.	<p>U22 2 bed – 4m3 in unit. 4m3 in basement. Complies.</p> <p>U23 2 bed – 2.5m3 in unit. 4m3 in basement. 1.5m3 shortfall.</p> <p>U24 1 bed – 3m3 in unit. 3m3 in basement. Complies. Location is poor.</p> <p>U25 2 bed – 4m3 in unit. 4m3 in basement. Complies. Location is poor</p> <p>All other units comply.</p>	

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: Shortfall of 6 car parking spaces.

- (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: Achieved, see above table.

- (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: Achieved, see above table.

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.*

Council's Landscape Development Officer reviewed the Application and identified the Application could not be supported in its current form. As such, the Application does not satisfy the relevant objectives and provisions under Chapter 2.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

The Application fails to satisfy the requirements of the Resilience and Hazards SEPP as a preliminary site investigation for contamination was not provided. Council's Environmental Health Officer reviewed the Application and found it unsatisfactory in this regard (see referral comments).

6.5. SEPP (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

Part 2.3 Development Control

Division 5 Electricity transmission or distribution

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 was referred to Ausgrid (the relevant electricity supply authority) and suitable conditions have been provided by the authority.

Division 10 Health Services Facilities

Clause 2.60 permits development for the purpose of a health services facility in the *prescribed zone*. R3 medium density residential is identified under Clause 2.59 as a prescribed zone.

Accordingly, the proposed ground floor health services facility use is permitted with consent.

Division 15 Railways and rail infrastructure

2.98 Development adjacent to rail corridors

“(2) Before determining a development application for development to which this section applies, the consent authority must—

- (a) *within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
- (b) *take into consideration—*
 - (i) *any response to the notice that is received within 21 days after the notice is given, and*

(ii) any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette."

2.99 Excavation in, above, below or adjacent to rail corridors

(2) Before determining a development application for development to which this section applies, the consent authority must—

(a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and

(b) take into consideration—

(i) any response to the notice that is received within 21 days after the notice is given, and

(ii) any guidelines issued by the Planning Secretary for the purposes of this section and published in the Gazette.

The Application was referred to Transport for NSW who provided concurrence in accordance with Clauses 2.98 and 2.99 subject to recommended conditions.

6.6. Randwick Local Environmental Plan 2012 (LEP)

The Subject Site is zoned Residential R3 Medium Density under Randwick Local Environmental Plan 2012. Within that zone development for the purpose of a Residential Flat Building is permitted with consent.

3 Permitted with consent
Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture
4 Prohibited
Funeral homes; Any other development not specified in item 2 or 3

- **Figure 18 – R3 permitted and prohibited development (source: RLEP 2013, ver. 06/06/2025)**

Notwithstanding, the Application is inconsistent with the specific objectives of the zone in that the proposed activity and built form will not meet the housing needs of the community and will detract from the aesthetic character and negatively impact the amenity of the local residents.

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

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Cl. 4.4 Floor Space Ratio	3:1 (1,470.3sqm)	2.99:1 (1,469sqm)	Yes
Cl. 4.3 Height of Building	26 Metres	26.34 Metres	No

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 5.10 - Heritage conservation

The Application is unsupportable in its current form with regard to heritage conservation (see referral comments).

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the height of buildings contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Description	Council Standard	Proposed	Proposed variation	Proposed variation %
Clause 4.3 Height of buildings	26 Metres	26.34 Metres	0.34 Metres	1.3%

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 *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 are two respects in which the written request needs to be “sufficient”.

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

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

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

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

The applicant's written justification for the departure from the FSR/Height of Buildings/Minimum Lot Size standard is contained in **Appendix 2**.

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

The applicant'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. The applicant has addressed each of the objectives as follows:

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

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

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

It is noted that objective (a) refers to being “compatible” with size and scale of the desired future character of the locality. It is considered that “compatible” does not promote “sameness” in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of *Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*:

“22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

In the context of No. 10 Blenheim Street, the site is zoned R3 Medium Density Residential under the Randwick LEP 2012, where the planning framework anticipates medium to high density residential flat buildings. The Housing Investigation Area (HIA) Master Plan establishes a desired future character of eight storey developments up to 26m, promoting increased residential density in proximity to public transport, including the High Street light rail stop.

The site currently benefits from an approval under DA/352/2019 for a five-storey residential flat building with ground floor non-residential uses. The current proposal seeks alterations and additions to increase the building to eight storeys, with a maximum height of 26.34m, comprising a minor variation of 0.34m (1.3%) above the LEP height control to accommodate a compliant lift overrun. The remainder to the building complies with the height of buildings development standard. That is, when viewed from the public domain the proposal will appear like a height compliant building with the extent of the variation limited to the lift overrun only which is not readily discernible from the public domain.

The proposal is considered compatible with the desired future character for the following reasons:

- Built form alignment: The eight-storey height is consistent with the HIA Master Plan, incorporating upper-level setbacks and articulation that reduce perceived bulk and scale and achieve a harmonious streetscape outcome.
- Minor and technical breach: The variation is limited to the centrally located lift overrun, which is recessive, integrated into the roof form, and will not result in any adverse visual, overshadowing, or privacy impacts.
- Architectural coherence: The design builds upon the approved scheme, utilising similar materials, façade treatments, and articulation strategies to ensure a cohesive urban design outcome.
- Positive streetscape contribution: The development maintains an active frontage, landscaped setbacks, and a podium treatment that aligns with the emerging desired character for the precinct.

Importantly, as confirmed by Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*, desired future character is set by planning controls such as the LEP and relevant master plans, rather than solely by existing surrounding built form. The proposed development is therefore consistent with the increased density, housing diversity, and urban renewal objectives for the area.

Strict compliance would prevent inclusion of the lift overrun, compromising equitable building accessibility and performance without delivering any additional planning benefit. The variation is minor, technically driven, and results in a development that is compatible with the existing and future character of the locality.

Planning Ingenuity Pty Ltd

Statement of Environmental Effects

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Accordingly, the proposal is consistent with Objective (a), delivering a high-quality, accessible, and well-designed medium-density residential outcome that positively contributes to the streetscape and aligns with the strategic vision for the precinct.

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

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

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

The site at No. 10 Blenheim Street is not located within a heritage conservation area, nor is it immediately adjacent to any listed heritage items under the Randwick Local Environmental Plan 2012. The nearest heritage item is located at No. 17 Blenheim Street but does not adjoin or directly interface with the subject site.

The proposed minor height variation, limited to a 0.34m lift overrun above the 26m LEP height standard, does not introduce any additional habitable floor space, bulk, or visual dominance that would adversely impact the setting, significance, or character of any nearby heritage item. Specifically:

- No adverse impact on contributory buildings: There are no contributory buildings or heritage-listed items directly adjoining the site that would be affected by the lift overrun. The variation is confined to the centrally located lift core, is recessive in form, and integrates seamlessly into the approved eight-storey building design.
- Maintains contextual compatibility: The proposed development, including the minor lift overrun, is compatible with the emerging scale and character envisaged under the Housing Investigation Area (HIA) Master Plan, which anticipates medium to high density residential buildings up to eight storeys within this precinct.
- No visual conflict with heritage significance: Given the absence of direct heritage interface, the minor technical exceedance does not result in any visual intrusion, overshadowing, or bulk impacts that would detract from the heritage significance of any item in the vicinity.

In summary, the proposed lift overrun variation is minimal, technical in nature, and does not affect the scale or character of any heritage item or conservation area. Accordingly, the proposal is consistent with Objective (b) of Clause 4.6, ensuring development compatibility with local heritage considerations where relevant.

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

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

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

The proposed development at No. 10 Blenheim Street, including the minor height variation for the lift overrun, has been carefully designed to protect the amenity of adjoining and neighbouring land.

- Visual Bulk: The lift overrun represents a minor 0.34m exceedance above the 26m LEP height standard. It is centrally located within the roof footprint, is recessive in form, and does not increase the perceived bulk or scale of the development as viewed from Blenheim Street, High Street, or adjoining residential properties. The overall building remains compatible with the approved eight-storey height envisaged under the Housing Investigation Area Master Plan.
- Loss of Privacy: The lift overrun does not introduce any additional habitable space, windows, or balconies. Accordingly, there is no change to overlooking or privacy impacts compared to a fully compliant development. The approved building setbacks, window placement, and balcony screening continue to protect the privacy of neighbouring residents.
- Overshadowing: Shadow diagrams confirm that the lift overrun has no measurable impact on overshadowing to adjoining properties. The minimal height breach does not cast additional shadows beyond those generated by the compliant built form, thereby maintaining acceptable solar access consistent with Apartment Design Guide (ADG) controls.

- Views: The minor height exceedance does not obstruct any significant public or private views. It is centrally recessed, maintaining view corridors across and around the site, and does not interfere with existing outlooks or district views enjoyed by surrounding properties.

In summary, the proposed variation is minor, technical in nature, and does not result in any adverse amenity impacts in terms of visual bulk, privacy, overshadowing, or views. The development achieves a high-quality architectural outcome consistent with the planning objectives for medium-density housing within the precinct.

Accordingly, the proposal satisfies Objective (c) of Clause 4.6, ensuring that amenity for adjoining and neighbouring land is maintained and protected.

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

The additional height proposed is minor and would be suitable within the context of the desired future character of the locality noting it is in relation to recessed overrun structures. Accordingly, the additional height would retain suitable compatibility with surrounding heritage items. The additional height is also not considered to result in any excess of visual bulk, privacy loss, overshadowing, or view impacts.

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:

- Variation is minor and limited to lift overrun;
- Additional height is necessary for function;
- Desired future character has been maintained;
- Orderly and economic use of land;
- Necessary to provide lift; and
- Aims and objectives met.

Assessing officer's comment: Council is satisfied that there are sufficient environmental planning ground to justify variation to the height of building development standard as per the applicant's submitted justification.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied.

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	See discussion in this report 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 Application does not satisfy the objectives and controls of Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential 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. Discussion of key issues

9.1.1. Insufficient amenity, locality impact, and failure to achieve design excellence;

The Application proposes a development that would provide insufficient amenity for its future potential occupants as well as unreasonably impact the amenity of the locality.

The Application seeks an additional 13 units (totaling 25 units) in addition to the 12 approved under DA/352/2019. Those additional units are sought without any further amendments to or provision of amenity improvements as a part of the development. Insufficient amenity is found with the Application via the below matters.

Insufficient car parking – ADG non-compliance

The applicable car parking rate for the Application is 17 spaces. The Guide to Traffic Generating Development require 17.4 parking spaces rounded down to 17. E7 of RDCP requires 16.8 rounded up to 17.

The Application seeks to continue its previous provision of parking, being a single basement level with 6 spaces, 1 accessible space, and 1 car share space (equivalence of 5).

A shortfall of 5 parking spaces is proposed by the Applicant and is deemed to be an unacceptable shortfall by Council.

The parking rates required in this instance, being 17 spaces for 25 units, is significantly discounted. Further, off-street parking availability is a concern within the locality of Blenheim Street and the wider Randwick locality in general. Accordingly, it is not considered acceptable that an Application provide insufficient parking when proposing such a significant increase to the density of the locality.

Council's engineering comments also acknowledge and is consistent with this assessment concern.

No communal open space – ADG non-compliance

The ADG requires 122.5sqm (25%) of the site area to be provided as communal open space. No communal space has been proposed under the subject application.

DA/352/2019 was approved via the Land and Environment Court without any communal open space.

The Application seeks to significantly increase the density of the RFB without adequate provision for the amenity of its future potential occupants. It is considered unacceptable to increase the density of the RFB while not providing suitable amenity via communal open space, especially in the circumstance where prior smaller density approval was deficient.

Council's DEAP found similar concerns with relation to lack of communal open space and increased density.

Insufficient separation – ADG noncompliance – privacy

The required habitable room setbacks under the ADG is 6 metres up to 4 storeys and 9 metres from 5 to 8 storeys.

Ground floor separation varies from 2.7 metres up to 6.9 metres to the east, and 2.7 metres up to 5.7 metres to the west.

4.77 metre separation is provided toward the west and 4.7 metres to the west from levels 1 to 8, being insufficient with the respective control requirements. Partial 2.7m separation if provided along the eastern elevation, however that setback provides no windows.

The effect of the proposed separation is unacceptable in terms of visual and acoustic privacy impacts as well as potential future solar access issues (see below).

Privacy impacts in this instance are considered unacceptable due to the extent of non-compliance proposed for building separation.

Basement exit circulation

As shown in the **Figures** below, the basement stairs lead to an external portion of the building, requiring users to exit and re-enter the building. It is preferable that the stairs lead internally. This amenity issue is considered a symptom of the sites unsuitability for the development proposed and a narrow block width. Assessment staff are not supportive of the proposed design configuration.

D74/25

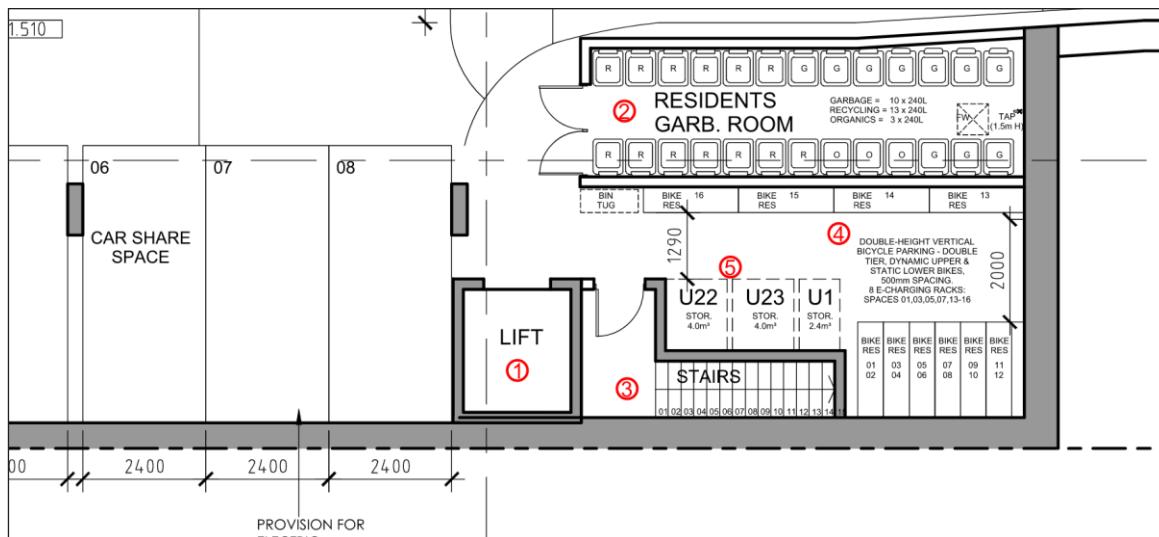


Figure 18 – Basement plan extract

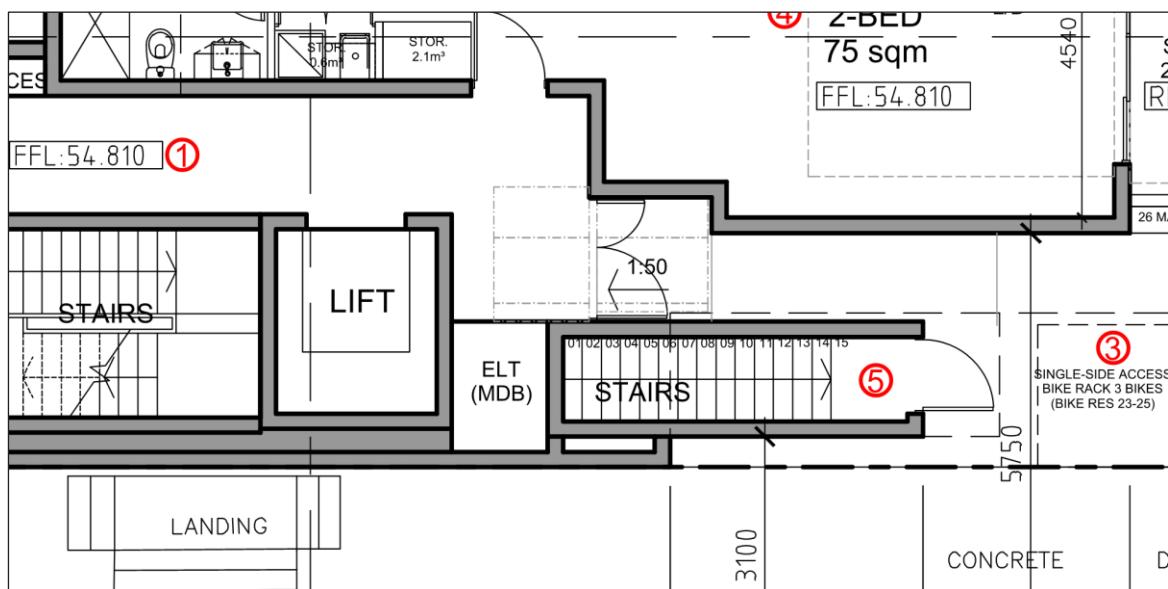


Figure 19 – Ground floor plan extract

Insufficient storage and poor location

As identified in the ADG assessment above, identified units have been provided with insufficient storage, as outlined by the DEAP.

“Storage is inadequate in many of the units, especially full heights storage that is not a wardrobe. In small units, this amenity is particularly critical.

The storage should be integrated into the design of the apartment, and should be minimum 600mm.”

Additionally, proposed basement storage for units 24 and 25 is poorly located within the basement with reduced accessibility and proportioned with a narrow width. Further refinements are required to address storage requirements in a more appropriate manner.

9.1.2. Failure to achieve Design Excellence

Clause 6.11 of RLEP requires that:

(3) *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 matters for consideration to determine achievement of design excellence are provided as below by Clause 6.11

(4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—*

(a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

A high standard of design is not considered to be achieved owing to the insufficient amenity resultant from the design.

(b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*

The Application is considered to detract from the amenity of the public domain by way of unacceptable parking impacts and undesirable materiality.

(c) *how the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,*

The Application proposes an unacceptable relationship to its neighbouring sites by way of its insufficient separation.

(d) *whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security, resource, energy and water efficiency, renewable energy sources and urban heat island effect mitigation,*

The building proposed is not considered to achieve these principles as detailed in the DEAP referral below.

(e) *whether the proposed development detrimentally impacts on view corridors and landmarks.*

No significant view corridor or landmark impacts are seen to result from the Application.

9.1.3. SEPP (Housing) 2021 – Inconsistent with the aims of the SEPP

The Application is inconsistent with the following aims of SEPP (Housing) 2021.

(a) *to ensure residential apartment development contributes to the sustainable development of New South Wales by—*

- (i) *providing socially and environmentally sustainable housing, and*
- (ii) *being a long-term asset to the neighbourhood, and*
- (iii) *achieving the urban planning policies for local and regional areas,*

The Application is not considered sustainable owing to its impacts upon amenity of its future potential occupants as well as the locality. Relevant urban planning policies, as detailed within this report, are not considered to be achieved.

(b) *to achieve better built form and aesthetics of buildings, streetscapes and public spaces,*

Refer to DEAP comments. All matters not considered achieved.

(c) to maximise the amenity, safety and security of the residents of residential apartment development and the community,

Amenity proposed is considered poor as detailed within this report.

(e) to contribute to the provision of a variety of dwelling types to meet population growth,

Housing mix is not supported in accordance with the relevant control framework and detailed in other sections of the assessment report.

9.1.4. Future Solar access

Council raises concern with the future solar access to the proposed apartments, which front High Street. As seen in the **Figure 20** below their primary northern solar access is achieved via a recessed element. It is anticipated that redevelopment of 8 and potentially 6 Blenheim Street, in a manner similar to the Application, would result in loss of a substantial amount of solar access to the Subject Site.

Insufficient separation and DCP block plan inconsistency are considered to contribute to this concern.

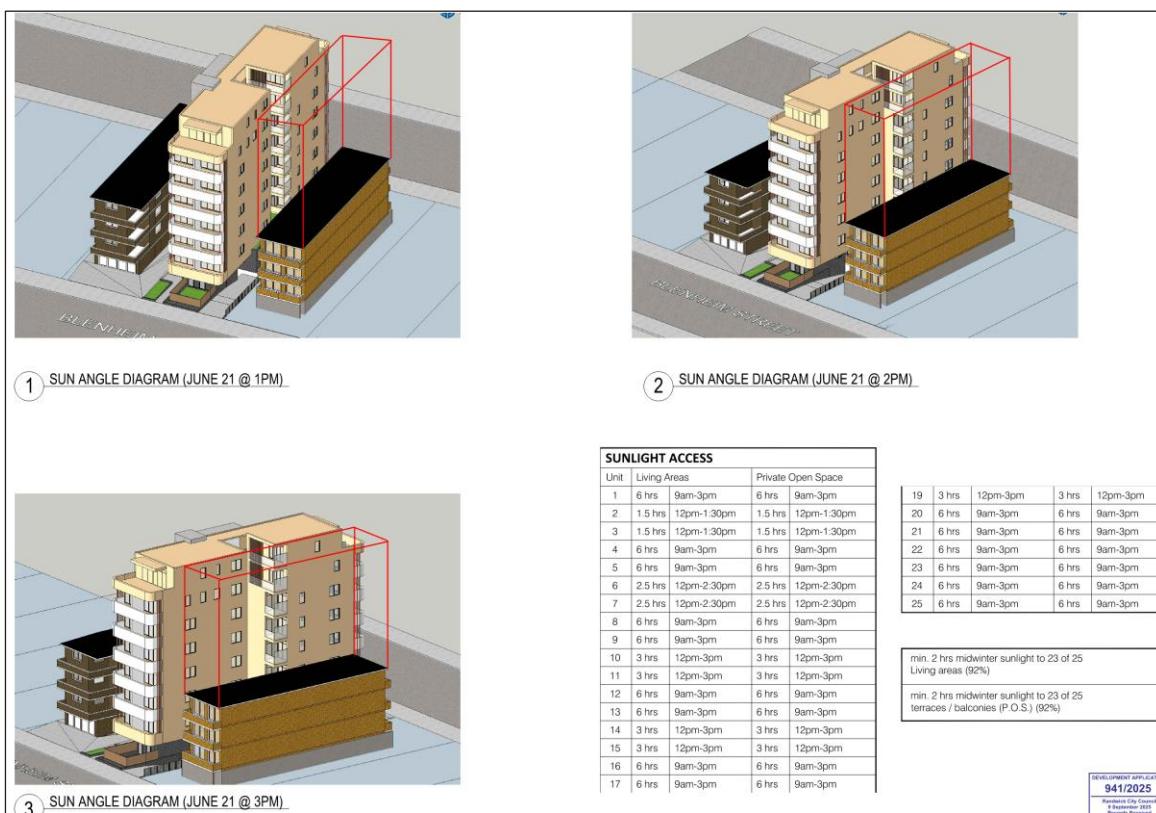


Figure 20 – Sun angle diagrams marked up

9.1.5. Block Plan Inconsistency

Shown in the **Figure 21** below, the Application will significantly disturb the anticipated block plan for High Street and is not considered to achieve the envisioned character for the locality.

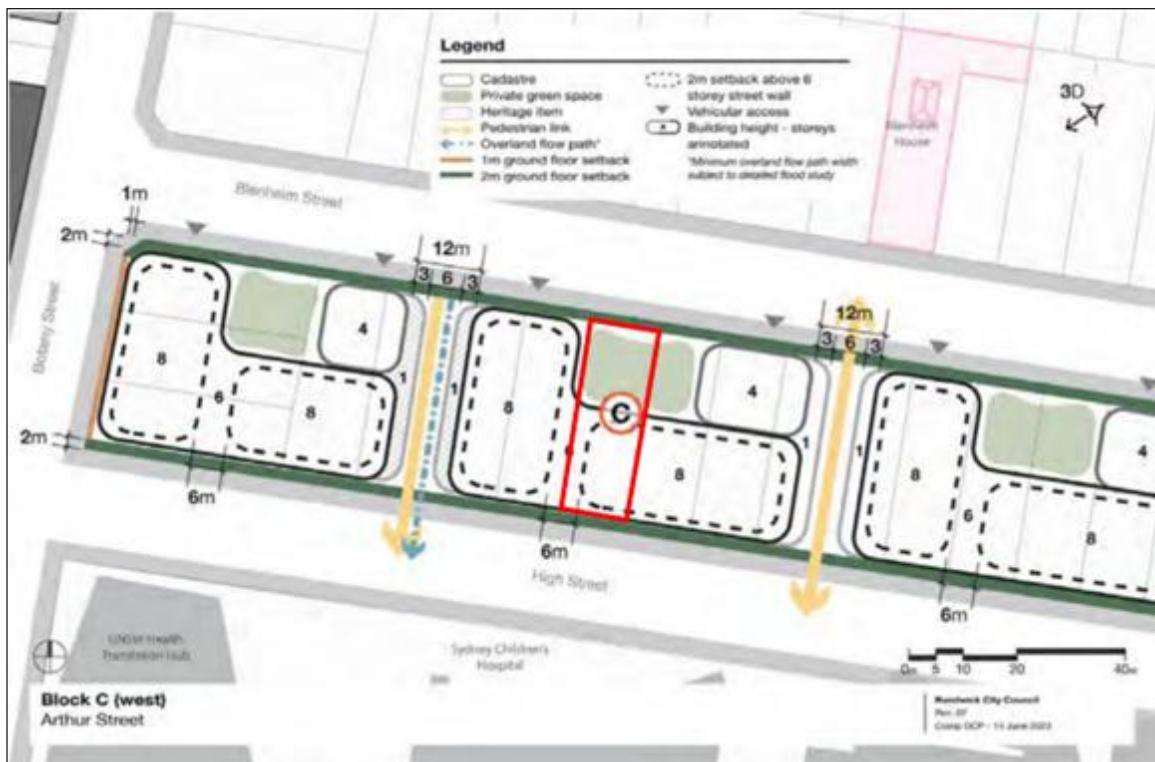


Figure 21 – Subject Site (red) within H2 block plan

Blenheim Street

Private green, north oriented court gardens with deep soil areas are proposed to alternate along Blenheim Street. This will provide residents with a sunny green common space and break up the scale of the buildings as they will be interspersed with landscaped gardens.”

The Application will significantly reduce the future planned courtyard gardens envisioned from the area, detracting from the amenity and is inconsistent with the areas desired future character as illustrated by the H2 DCP Block plan above.

Built Form

The Application also does not comply with the following High Street built form controls under 9.2.3 of Part E7 of RDCP:

b) Establish a six storey street wall height

A seven storey street wall is proposed with a recessed eighth level. The Application is the first within the HIA to propose redevelopment since the introduction of the newly formed controls. Accordingly, Council finds the variation to the envisioned street wall height to be unacceptable.

The relevant built form objectives under 9.2.3 are provided below.

Objectives

- *The built form is to define well-scaled streetscapes, laneways, urban plazas and parks*
- *Provide variety and interest in streetscapes through buildings that are articulated within the overall permitted development envelope*
- *Avoid excessively overshadowing the public domain and reduce the apparent height of buildings through setting back the upper levels of buildings*
- *Maximise direct sunlight to public spaces and footpath zones by strategically positioning and orientating taller built form*

- Create courtyard style development with generous central green spaces providing urban amenity through locating built form on the perimeter of city blocks
- Achieve an orderly consolidation of sites to realise optimum urban and building design outcomes that are ADG compliant.

The built form is not considered well scaled as it diverges from the envisioned streetscape and contributes additional unnecessary bulk and apparent height toward both High and Blenheim Street. The additional bulk resultant from the street wall would further cause additional shadows to the locality. Accordingly, the proposed 7 storey street wall is not considered to achieve the above objectives.

Public Domain and Access

The Application does not comply with the following controls:

g) The landowner is to dedicate the pedestrian link and street setback strips of land to Council (as a condition of consent). The calculation of FSR and deep soil will be based on the original site area including the required pedestrian link/s and setback strip area/s

The Application is required to provide a two metre dedication to both High and Blenheim Street to facilitate improved public domain and access. The ground floor drawings indicate no dedication is proposed under the scheme. Further, elements are proposed in those dedication zones, including the ground floor unit's private open space, which renders any future dedication unviable. i

Due to failure to dedicate the front and rear setback, the Application will compromise future dedications within the wider H2 block and is not considered to meet the following objectives under 9.2.4:

- *Improve pedestrian permeability through the city blocks with new and improved 24/7 public pedestrian links;*
- *Create new sightlines between existing public spaces and public transport infrastructure to improve wayfinding;*
- *Improve the quality of footpaths and landscaping along the main streets to enhance the pedestrian experience;*

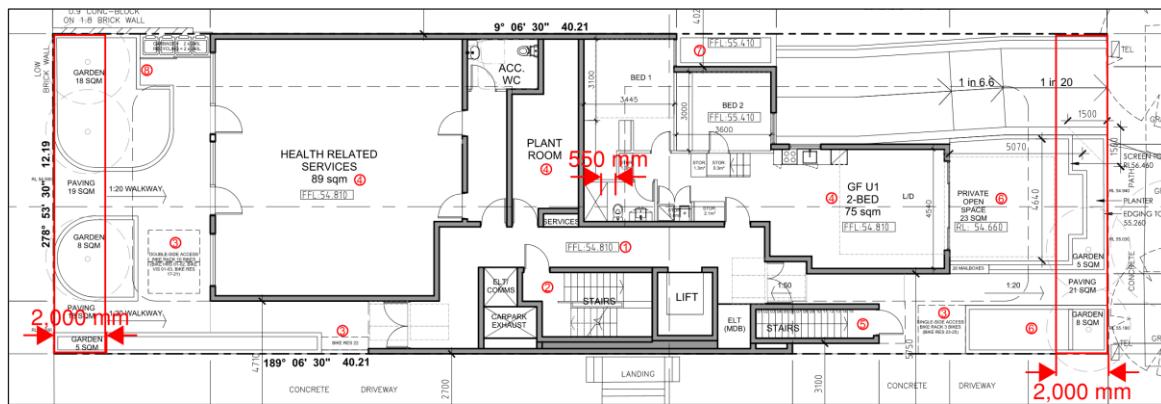


Figure 22 – Ground floor plan markup – dedication zones

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. 941/2025 for Amending Development Application seeking consent for an additional three (3) residential storeys resulting in an eight storey building comprising 25 residential apartments (13 additional), changes to ground floor commercial (health services) premises and basement car parking. The proposal includes a range of design, structural, and building compliance revisions to the previously approved development under DA/352/2019 at No. 10 Blenheim Street, Randwick, for the following reasons:

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 941/2025 for Amending Development Application seeking consent for an additional three (3) residential storeys resulting in an eight storey building comprising 25 residential apartments (13 additional), changes to ground floor commercial (health services) premises and basement car parking. The proposal includes a range of design, structural, and building compliance revisions to the previously approved development under DA/352/2019 at No. 10 Blenheim Street, Randwick, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of *Environmental Planning and Assessment Act 1979*, the Application fails to comply with the following environmental planning instruments:
 - The Application does not satisfy the following ADG controls as prescribed by *SEPP (Housing) 2021*:
 - 3D-1 - Communal and public open space;
 - 3F-1 - Visual privacy;
 - 3J-1 - Bicycle and car parking;
 - 4D - Apartment size and layout;
 - 4E - Private open space and balconies; and
 - 4G – Storage.
2. The Application does not satisfy the requirements of chapter 2 of *SEPP (Biodiversity and Conservation) 2021*, noting the proposal does not protect the biodiversity values of trees and other vegetation in non-rural areas of the State or preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
3. The Application does not satisfy the requirements of chapter 4 of *SEPP (Resilience and Hazards) 2021* and has not demonstrated that the site is suitable for the proposed development in terms of potential contamination.
4. The Application does not satisfy the *Randwick Local Environmental Plan 2012* 1.2 *Aims of the Plan* 2 (a) & (d) or the objectives of the R3 zone as Council is not satisfied the housing needs of the community will be met in a manner satisfactory to their amenity and the amenity of the surrounding locality. The Application is further considered inconsistent with the desired future character of the locality.
5. The proposal has failed to demonstrate a satisfactory outcome in accordance with the requirements and objectives of Clause 5.10 Heritage Conservation of the Randwick LEP 2012.
6. The proposal has failed to demonstrate a satisfactory outcome in accordance with the requirements and objectives of Clause 6.11 Design Excellence of the Randwick LEP 2012.
7. Pursuant to Section 4.15(1)(a)(iii) of *Environmental Planning and Assessment Act 1979*, the Application does not comply with the following provisions under *Randwick Comprehensive Development Control Plan 2023*:

- Part B6: Recycling and Waste Management
- Part B8: Water Management
- C2 Medium Density Residential:
 - 2.3.2 Communal open space;
 - 5.3 Visual privacy; and
 - 5.8 safety and security.
- E7 Housing Investigation Area:
Part A
 - 3. Design excellence
 - 5. Built form
 - 8. Heritage conservation.

Part B - 9.2 High Street HIA

- 9.2.3 Built form
- 9.2.4 Public domain and access
- 9.2.5 Individual city block plans

Part C

- 10. Housing Mix
- 13. Acoustic amenity
- 15. Articulation and Modulation
- 16. Materials and Finishes
- 17. Building awnings, entry and circulation
- 18. Landscaped area
- 19. Transport, parking and access
- 20. Sustainability and Waste Management

8. The proposal has not demonstrated compliance with AS/NZS 2890.1:2004 in relation to the minimum width for off-street car spaces.
9. Pursuant to the provisions of section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts from the Application as detailed in this report are considered unacceptable.
10. Pursuant to Section 4.15(1)(c) of *Environmental Planning and Assessment Act 1979*, the Subject Site is not considered suitable for the proposed development and has not demonstrated that it is capable of facilitating the extent of development sought.
11. Pursuant to Section 4.15(1)(d) of *Environmental Planning and Assessment Act 1979*, the public submissions identify the unsuitability of the Application for the locality.
12. Pursuant to the provisions of section 4.15(1)(e) of *Environmental Planning and Assessment Act 1979* and for the reasons detailed throughout this report, Council is not satisfied that the development is in the public interest.

Appendix 1: Referrals

1. Design Excellence Panel Comments

“PROPOSAL

Amending Development Application seeking consent to more than double the number of apartments in the development. This will result in an additional three (3) residential storeys, resulting in an eight-storey building, and 25 residential apartments (13 additional). The application also seeks changes to ground floor commercial (health services) premises and basement car parking. The proposal does not include corresponding changes to amenity associated with apartment numbers and population on site.

Context and Neighbourhood Character

- The site is located between Blenheim and High Streets in the university and hospital precincts of Randwick.
- It is directly opposite the Royal Randwick hospital precinct, and immediately adjacent to the UNSW campus.
- The High Street light rail station is within 200 meters of the site.
- The site forms part of the HIA area nominated for High Street, with a Council-issued block plan proposed for the area.
- The High Street block plan, in addition to allowing additional height above the current controls (up to 8 storeys), also suggests variations in height across parts of the block, as well as open space along Blenheim Street, facing north.
- The subject site occupies a part of the block plan intended to have 6 and 8 storeys towards High Street, with that half of the site fronting Blenheim Street indicated as open space.
- In this context, the nominated changes proposed by the applicant appear purely quantitative, seeking additional yield to take advantage of expanded allowances within the issued block plan, without any corresponding amenity to service those additional units, or the doubled residential population. It is noted that the proposal does not comply with a number of Council and ADG controls, including height, street wall height, car parking, landscape area, deep soil area, communal open space, setbacks and building separation.
- The following advice relates directly to the lack of amenity required to service the additional 13 apartments and corresponding residential population, and thus has considered the entire building within this assessment, and not simply the 13 units placed on top of the existing scheme.

Built Form and Scale

- Given the new regulatory context inherent in the HIA-driven block plans for the street, the built form and scale will be compatible with the eventual built context.

Density

- The revisions proposed significantly increase the density on site, more than doubling the residential population. Without a corresponding increase in external and internal amenity, the proposal is unacceptable.
- The applicant should investigate reducing the number of units to improve the public spaces of the building, and begin to provide some of the communal amenity required.
- This might take the form of a roof terrace on the upper level, or transforming the compromised ground floor unit into covered external space, directly related to communal open space facing Blenheim Street.

- They should also consider merging the upper floor unit into one larger apartment with setbacks, so the building reads with a setback upper floor

Sustainability

- Considering the extent of site coverage, the development should have an integrated and comprehensive water management scheme – all water falling on the site should be harvested, stored treated and reused, in toilets, laundries and for garden irrigation. The corresponding reduction in water use (and cost) will benefit the future tenants.
- The flat concrete roofs are an easy opportunity to deploy an array of PV solar panels. The corresponding reduction in energy procured from the grid will benefit the future tenants.

Landscape

- There is no communal open space for the future tenants of the building. Given the applicants' stated desire to provide affordable family housing, this is a serious deficiency, compounded by proposing to more than double the number of units and resident population. The units themselves are already small – in developments of this scale, communal space is a critical factor in creating a liveable place.
- If, as suggested below, the number of units are reduced to better address the requisite amenity required, primary consideration should be given to providing the requisite open space, either in the form of a roof terrace, or in the Blenheim Street frontage and associated ground level space.
- Given the projected use of the ground floor for health-related services, the landscape area facing High Street should offer some user amenity, such as seats. This user amenity should not conflict with bicycle parking, nor be negatively impacted by the rubbish bin storage area. This latter area may need to be moved away from the building and its windows, and screened architecturally and by buffer planting.
- The planter next to bedrooms 1 and 2 in Unit 1 is inaccessible, making maintenance, servicing and tending impossible.
- The planters at either end of the non-trafficable roof on level 1 are inaccessible as well.
- The planting suggested for the open courtyard within the non-trafficable area of level 1 is questionable, especially in terms of light and maintenance access. Perhaps this area could be investigated as part of the solution to the lack of open space amenity for the residents.
- The ground floor planter along the entry access from High Street seems inadequate for successfully propagating planting. All planters should be detailed to indicate minimum soil widths and depths, as well as adequate drainage.

Amenity

- The residential entry is poor: circuitous, winding around the core, and requiring ramps up and down.
- The floor to floor height appears tight, 3200mm is appropriate to deliver 2700mm ceilings (minimum for all habitable rooms).
- The ground floor unit is compromised: stairs up to the second bedroom, both bedrooms overlooking the driveway ramp, inadequate dimensions for bedroom 1 (if the joinery indicated in the drawings is a wardrobe, the room width is less than 3 meters), tiny kitchen, etc. Consideration should be given to eliminating this unit in favour of increasing the commercial space and its usability, and delivering some of the requisite communal open space. This would also allow a more generous entry space.

- *Provisions of parking, for cars, motorcycles and bicycles are inadequate. While minimizing car parking may be acceptable to the Panel, given the proximity of public transport, one would expect the doubling of units to generate a corresponding increase in all types of parking and storage for motorcycles and bicycles.*
- *Storage is inadequate in many of the units, especially full heights storage that is not a wardrobe. In small units, this amenity is particularly critical.*
- *The storage should be integrated into the design of the apartment, and should be minimum 600mm.*
- *The apartments should show dining and living room furniture with considered kitchen layouts. It appears currently the layouts are compromised.*
- *Many of the kitchens are too small. This is not a consideration to be left to detail design – basic space planning to guarantee decent amenity needs to be considered and included at DA stage, to ensure the amenity is delivered.*

Safety

- *The narrow balcony spaces in Units 2, 6, 10, 14, 18 and 22 represent a serious safety risk: spaces between a balustrade and wall less than 1000mm can be scaled by children propping themselves against both sides. Any balcony spaces need to be at least 1000mm wide to avoid this hazard.*

Housing diversity and Social Interaction

- *The proposal does not deliver any three-bedroom units, which one would expect for a development designed for families. Reduction in the number of units may provide the flexibility on the upper floor to deliver a three-bedroom unit.*

Aesthetics

- *Rendered and painted concrete on the upper levels of multi-story buildings is not a desirable solution – the applicant should explore integral finishes, rather than applied ones.*
- *The applicant has advised detail design with consultants has been undertaken but that is not reflected in the set of drawings. It is unclear where the condensors are located, and the roof shows no services or the vents. This additional overlay of detail is likely to have a negative impact on the design unless integrated and resolved at DA stage.*

SUMMARY AND RECOMMENDATIONS

The Panel accepts the applicants' desire to provide additional residential accommodation, taking advantage of the uplift inherent in the HIA-driven block plans. However, residential accommodation is not simply unit count – each unit drives a corresponding demand for amenity throughout the building. This has not increased in any way, despite the unit count doubling, further compounding amenity metrics that were already substandard.

The Panel suggests a reduction of unit numbers to deliver some of the requisite amenity, and look forward to reviewing the proposal again.”

2. External referral comments:

- 2.1. RMS**
Concurrence provided subject to conditions
- 2.2. Sydney Water**
Supported subject to conditions.
- 2.3. Ausgrid**
No concerns raised by the authority.
- 2.4. Sydney Airport**
Concurrence provided subject to conditions.

3. Internal referral comments:**3.1 Heritage planner****Controls**

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

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

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

Comments

The proposal appears to be out of character due to its bulk and height and may cause irreversible adverse impact on the streetscape character and its context including the heritage item.

The approved DA appears to be the most appropriate development mindful of its context and streetscape character.

Recommendation

The applicant is to provide further information, including but not limited to photomontages looking east and west including the views to and from the item in Blenheim street, to ensure that there is no adverse impact on the streetscape character including heritage item.

3.2 Development Engineering**General Comments**

The application is not supported in its present form by Development Engineering due to identified issues with the waste storage, parking provisions and layout, and stormwater management. Development Engineering recommends that the subject development application is refused.

Waste Management Issues

Development Engineering has reviewed the submitted "Site Recycling and Waste Management Plan" and notes that no bulky waste storage room is provided within the proposed development. Clause m), Section 20, Part E7 of RDCP states that, "New developments must provide an internal bulky waste storage area of 20m² for the temporary storage of periodic bulky waste collection".

The "Site Recycling and Waste Management Plan" states the following reasonings for the lack of provision for a bulky waste storage room:

Residents shall temporarily store any of these items within their dwellings.
Residents shall dispose of any hard waste including large E-waste and bulky items by using Council's clean-up service as required.

Residents shall transfer these items to the kerbside along Blenheim Street on the day before the cleanup service has been booked. Cleanup services may not be booked for the same day that the collection of general waste, recycling and organics will occur. Alternatively, residents can transfer hard waste items directly to any of the resource recovery centres available in the area (e.g. Randwick Recycling Centre).

Development Engineering does not deem the above reasonings as satisfactory for lacking the provisions for a bulky waste storage room.

Parking Layout Issues

With reference to the basement plan in Drawing DA104, car space 08 has been designed with a width of 2.40m. As per AS/NZS 2890.1:2004, the minimum width for off-street car spaces is 2.40m plus an additional 0.3m for each side that is adjacent to an obstruction. The lift shaft wall is considered as an obstruction, therefore, the minimum required width for car space 08 must be 2.70m. As a result, Development Engineering deems the car space layout as not compliant with Australian Standards and cannot support it.

Parking Provisions Issues

Upon review of the "Traffic Impact Statement", the design was conducted in reference to Part E7 of RDPC and the "Guide to Transport Impact Assessment".

Table 4 of the submitted "Traffic Impact Statement" illustrates that there will be 12 x 1-bedroom units and 3 x 2-bedroom units. This is not in line with the submitted architectural plans which propose 11 x 1-bedroom units and 4 x 2-bedroom units. The amount of studio apartments and GFA for the health business are in line with the submitted architectural plans. With this discrepancy in mind, the below table depicts the correct parking demand figures:

Criteria	Amount	GTIA Demand	RDPC Demand
Studio	10	4	2
1-bedroom	11	4.4	6.6
2-bedroom	4	2.8	3.2
Visitor	25	3.6	5
Health GFA	89m ²	0	0.712
Total		14.8 (≈15)	17.512 (≈18)

With reference to Objective 3J-1 of the "Apartment Design Guide" (ADG), the minimum car parking requirement for a residential flat building development is as set out in the GTIA or Council's DCP, whichever is less. Therefore, the official parking demand for the proposal is 15 car spaces. The architectural plans depict 6 standard car spaces, 1 accessible car space and 1 car share space which has a value of 5 car spaces. This proposed arrangement provides an effective total of 12 car spaces which results in a parking shortfall of 3 car spaces. Development Engineering has reviewed the supporting points in section 4.1 of the "Traffic Impact Statement" and does not deem them as satisfactory in justifying a 20% parking shortfall of 3 car spaces.

Stormwater Management Issues

Development Engineering has evaluated the submitted "Civil Drawing Set" which shows the proposed stormwater management system. This system proposes an On-Site Detention (OSD) tank which is discharging via a Ø300mm connection pipe along Council's footpath before tapping into the existing kerb inlet pit fronting no.6 Blenheim Street.

Firstly, it is unclear why the connection pipe has been designed with a diameter of 300mm considering that the OSD tank orifice is designed to a diameter of 90mm.

Secondly, the design is based off survey data from 2016 which was conducted before the High Street reconstruction due to the implementation of the Light Rail infrastructure. Through a Google Street View search, it can clearly be seen that Council's kerb inlet pits have been reconstructed and vary in location in comparison to the 2016 survey data. As of today, there is a kerb inlet pit in High Street that is directly in front of no.8 Blenheim Street and should be considered as the primary stormwater connection point for the subject site.

Thirdly, the OSD tank has been designed with an effective storage depth of 0.50m and spans in size to a length of 10.40m at a width of 2.70m. Only one access point has been provided due to the OSD tank being mostly located beneath the habitable floor space dedicated to the health business premise. There are severe maintenance concerns for the proposed OSD tank design due to the lack of access openings and shallow tank depth which prohibits human accessibility.

Fourthly, a rainwater tank has not been included in the proposed stormwater management design which raises concern for how the development will achieve compliance with rainwater reuse requirements.

Fifthly, the stormwater management plans do not depict how the following catchments will be collected and connected to the site's OSD tank:

- All downpipe and roof catchments
- The basement ramp catchment
- All impervious and pervious catchments for the common areas fronting Blenheim Street

Finally, no stormwater calculations have been provided for the design of the OSD tank.

Due to the above stormwater issues, Development Engineering cannot support the development's stormwater management design.

3.3 Landscaping

"I'm aware of the previous DA/352/2019 which was approved by the L & E Court. It had a similar footprint but this proposal now seeks an extra 4 floor levels more on top.

This current proposal provides 7% of the site area as Deep Soil which complies with Part 3E of the ADG.

No Common Open Space is provided at all, the same as the previous approval. Part 3D of ADG requires 25% of site area, so does not comply.

Landscape Plans have been submitted with this application. I don't support selection of the 2 trees proposed to front Blenheim Street due to their size at maturity and the confined space they'd be growing in. Suitable alternatives (preferably selecting endemic species) should be used in their place. This isn't major and can just be conditioned.

No details or notations have been provided to confirm the soil depth & volume for the planters over podium. Makes it difficult to assess whether proposed planting is suitable for the space, and subsequently, whether it will be successful into the future.

The planter along the western elevation of Levels 1-2 are inaccessible, so the ability to perform routine maintenance activities is questioned. Details need to confirm how this will be achieved.

Conditions on DA/352/2019 allowed the removal of both street trees in Blenheim Street, including the most desirable, western one (Cheese Tree), due to its direct conflict with the basement ramp, with the Umbrella Tree on the western boundary being an exempt/weed tree which we'd remove regardless.

My preference would be to retain the western native Cheese Tree and relocate the crossing and basement ramp to the opposite, eastern side, as this then only affects the low value weed tree. I understand this may not be possible due to implications it may have on other aspects of the proposal, so have suggested it in case it comes up as part of negotiations/amendments etc."

3.4 Environmental Health

"Comments

In relation to the Environmental Health contentions relating to this development application, the following information has not been provided and the application cannot be supported without such information. Please see below Environmental Health concerns and reasons to support the refusal.

Outstanding information/Reason for refusal

Environmental Health Item 1: Noise Concerns

Relevant Controls/Policies:

Environmental Planning and Assessment Act 1979 Section 4:15 Evaluation (b)

Randwick City Council DCP Residential – E7 – Acoustic Amenity (Part C, 13)

Housing SEPP- ADG integrated assessment ventilation internal noise levels compliance noise criteria

EH Assessment comments:

Council is required to consider both the internal acoustic amenity for future occupants and the potential noise impacts on surrounding properties arising from the proposed development. No acoustic report was submitted with the application.

No acoustic report has been received with the application to demonstrate compliance with internal noise level requirements and confirming compliance for noise from the development complying with relevant noise criteria. In the absence of a detailed acoustic assessment prepared by a suitably qualified consultant. Without this information, Council is unable to determine whether the proposed development complies with relevant internal noise criteria or whether appropriate mitigation measures have been incorporated.

Recommendation

Council cannot properly assess the likely internal and external noise impacts of the proposed apartment development without an acoustic assessment being undertaken. In this regard, it is recommended the application is not supported by Council until the application includes sufficient information to assess acoustic impacts.

Environmental Health Item 2: Contaminated Land**Relevant Controls/Policies:**

Environmental Planning and Assessment Act 1979 Section 4:15 Evaluation (b)

State Environmental Planning Policy (Resilience and Hazards) - Chapter 4)

Contaminated Land Management Act 1997

Council's Contaminated Land Policy 1999.

Environmental	Health	Assessment	comments
<i>Council is required to consider the potential for land contamination as part of its obligations under Section 4.15 of the Environmental Planning and Assessment Act 1979. The subject site includes land that has been used for historical commercial purposes, and as such, the potential for contamination must be appropriately assessed. The development application did not include a Preliminary Site Investigation (PSI) to address this matter. A formal request for information was issued to the applicant, specifically requesting the submission of a PSI however, no such report was provided.</i>			

Recommendation

Council cannot be satisfied that the land is suitable for the proposed use, or that it can be made suitable. Accordingly, the application must not be supported on the basis that potential land contamination has not been adequately addressed.”

Appendix 2: Applicant's written request seeking to justify the contravention of the development standard**D74/25**

Clause 4.6 Variation Statement – Building Height (RLEP Clause 4.3)

1. Height of Buildings Standard

Clause 4.3 of the Randwick Local Environmental Plan 2012 (RLEP 2012) relates to maximum building heights and references the Height of Buildings Map, which identifies the subject site as having a maximum permitted building height of 26 metres.

Building height is defined as:

building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

A height map is provided in Figure 14 below.



Figure 14 Extract from the Height of Buildings Map [26m]

2. Proposed variation to height of buildings development standard.

The Randwick LEP 2012 prescribes a maximum building height of 26 metres for the subject site. The architectural plans indicate that the proposed development generally complies with this height limit, with the main roof parapet achieving a height of approximately 26 metres.

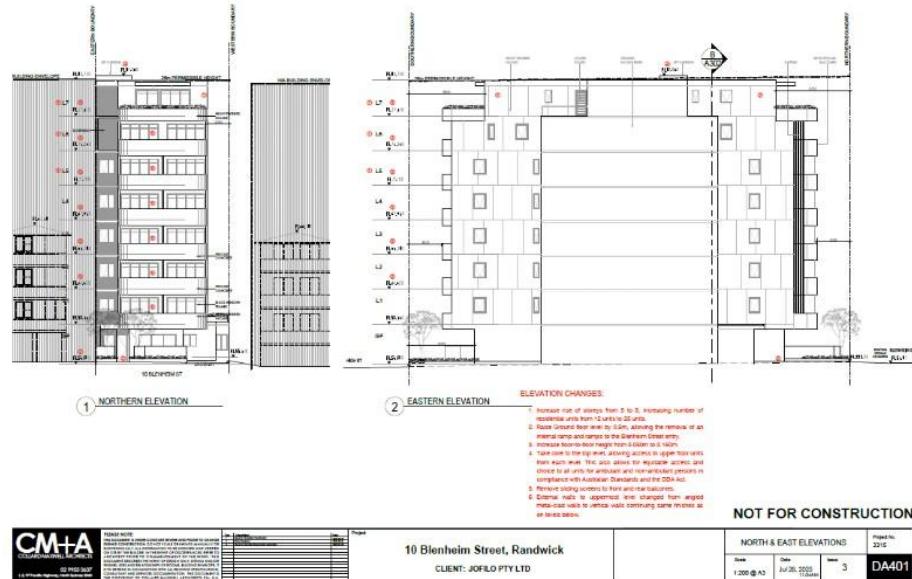
A minor non-compliance is proposed for the lift overrun, summarised as follows:

- Lift overrun: Proposed maximum height of 26.34 metres, representing a variation of 0.34 metres or approximately 1.3% above the 26m height standard.

Key considerations include:

- The minor exceedance relates only to the lift overrun structure, which is centrally located, recessed from all building edges, and does not result in additional overshadowing or view impacts.
- The lift overrun is required for compliant lift access to the upper levels, ensuring accessibility in accordance with the Disability Discrimination Act (DDA) and NCC requirements.
- The overall built form remains consistent with the desired future character envisaged for the precinct under the Housing Investigation Area Master Plan, with eight storeys permitted on the site.

Given the minor and technical nature of the variation, and its functional necessity to achieve accessible design outcomes without adverse environmental or amenity impacts, the proposed variation is considered acceptable and in the public interest.



3. Clause 4.6 to RLEP 2012

The objectives and provisions of clause 4.6 are as follows:

- (1) *The objectives of this clause are as follows—*
 - to provide an appropriate degree of flexibility in applying certain development standards to particular development;*
 - 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,

(caa) clause 5.5,

(ca) clauses 6.4 and 6.5,

(cb) clause 6.10,

(cc) clauses 7.3 and 7.8(2)(a)–(c).

The development standards in clause 4.3 are not “expressly excluded” from the operation of Clause 4.6.

4. **Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))**

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

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

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

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

The objectives and relevant provisions of clause 4.3 of RLEP are as follows:

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

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

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below.

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

It is noted that objective (a) refers to being "compatible" with size and scale of the desired future character of the locality. It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of *Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*:

"22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."

In the context of No. 10 Blenheim Street, the site is zoned R3 Medium Density Residential under the Randwick LEP 2012, where the planning framework anticipates medium to high density residential flat buildings. The Housing Investigation Area (HIA) Master Plan establishes a desired future character of eight storey developments up to 26m, promoting increased residential density in proximity to public transport, including the High Street light rail stop.

The site currently benefits from an approval under DA/352/2019 for a five-storey residential flat building with ground floor non-residential uses. The current proposal seeks alterations and additions to increase the building to eight storeys, with a maximum height of 26.34m, comprising a minor variation of 0.34m (1.3%) above the LEP height control to accommodate a compliant lift overrun. The remainder to the building complies with the height of buildings development standard. That is, when viewed from the public domain the proposal will appear like a height compliant building with the extent of the variation limited to the lift overrun only which is not readily discernible from the public domain.

The proposal is considered compatible with the desired future character for the following reasons:

- Built form alignment: The eight-storey height is consistent with the HIA Master Plan, incorporating upper-level setbacks and articulation that reduce perceived bulk and scale and achieve a harmonious streetscape outcome.
- Minor and technical breach: The variation is limited to the centrally located lift overrun, which is recessive, integrated into the roof form, and will not result in any adverse visual, overshadowing, or privacy impacts.
- Architectural coherence: The design builds upon the approved scheme, utilising similar materials, façade treatments, and articulation strategies to ensure a cohesive urban design outcome.
- Positive streetscape contribution: The development maintains an active frontage, landscaped setbacks, and a podium treatment that aligns with the emerging desired character for the precinct.

Importantly, as confirmed by *Preston CJ in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*, desired future character is set by planning controls such as the LEP and relevant master plans, rather than solely by existing surrounding built form. The proposed development is therefore consistent with the increased density, housing diversity, and urban renewal objectives for the area.

Strict compliance would prevent inclusion of the lift overrun, compromising equitable building accessibility and performance without delivering any additional planning benefit. The variation is minor, technically driven, and results in a development that is compatible with the existing and future character of the locality.

Accordingly, the proposal is consistent with Objective (a), delivering a high-quality, accessible, and well-designed medium-density residential outcome that positively contributes to the streetscape and aligns with the strategic vision for the precinct.

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

The site at No. 10 Blenheim Street is not located within a heritage conservation area, nor is it immediately adjacent to any listed heritage items under the Randwick Local Environmental Plan 2012. The nearest heritage item is located at No. 17 Blenheim Street but does not adjoin or directly interface with the subject site.

The proposed minor height variation, limited to a 0.34m lift overrun above the 26m LEP height standard, does not introduce any additional habitable floor space, bulk, or visual dominance that would adversely impact the setting, significance, or character of any nearby heritage item. Specifically:

- No adverse impact on contributory buildings: There are no contributory buildings or heritage-listed items directly adjoining the site that would be affected by the lift overrun. The variation is confined to the centrally located lift core, is recessive in form, and integrates seamlessly into the approved eight-storey building design.
- Maintains contextual compatibility: The proposed development, including the minor lift overrun, is compatible with the emerging scale and character envisaged under the Housing Investigation Area (HIA) Master Plan, which anticipates medium to high density residential buildings up to eight storeys within this precinct.
- No visual conflict with heritage significance: Given the absence of direct heritage interface, the minor technical exceedance does not result in any visual intrusion, overshadowing, or bulk impacts that would detract from the heritage significance of any item in the vicinity.

In summary, the proposed lift overrun variation is minimal, technical in nature, and does not affect the scale or character of any heritage item or conservation area. Accordingly, the proposal is consistent with Objective (b) of Clause 4.6, ensuring development compatibility with local heritage considerations where relevant.

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

The proposed development at No. 10 Blenheim Street, including the minor height variation for the lift overrun, has been carefully designed to protect the amenity of adjoining and neighbouring land.

- Visual Bulk: The lift overrun represents a minor 0.34m exceedance above the 26m LEP height standard. It is centrally located within the roof footprint, is recessive in form, and does not increase the perceived bulk or scale of the development as viewed from Blenheim Street, High Street, or adjoining residential properties. The overall building remains compatible with the approved eight-storey height envisaged under the Housing Investigation Area Master Plan.
- Loss of Privacy: The lift overrun does not introduce any additional habitable space, windows, or balconies. Accordingly, there is no change to overlooking or privacy impacts compared to a fully compliant development. The approved building setbacks, window placement, and balcony screening continue to protect the privacy of neighbouring residents.
- Overshadowing: Shadow diagrams confirm that the lift overrun has no measurable impact on overshadowing to adjoining properties. The minimal height breach does not cast additional shadows beyond those generated by the compliant built form, thereby maintaining acceptable solar access consistent with Apartment Design Guide (ADG) controls.

- Views: The minor height exceedance does not obstruct any significant public or private views. It is centrally recessed, maintaining view corridors across and around the site, and does not interfere with existing outlooks or district views enjoyed by surrounding properties.

In summary, the proposed variation is minor, technical in nature, and does not result in any adverse amenity impacts in terms of visual bulk, privacy, overshadowing, or views. The development achieves a high-quality architectural outcome consistent with the planning objectives for medium-density housing within the precinct.

Accordingly, the proposal satisfies Objective (c) of Clause 4.6, ensuring that amenity for adjoining and neighbouring land is maintained and protected.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

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

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* whereby Justice Pain ratified the original decision of Commissioner Pearson. In this case, the proposal seeks a minor variation to the 26m height standard under Clause 4.3 of the Randwick LEP, limited to the lift overrun only, which extends approximately 1.34m above the permissible height.

The following specific planning grounds justify the variation:

1. The extent of the variation is minor and limited to a lift overrun

The maximum extent of variation sought is 0.34m or 1.3% and does not apply to the entire building and only applies to the lift overrun. Specifically, the extent of the variation is considered to be relatively minor in the context of surrounding development in the Health and Education Precinct including buildings within UNSW and Prince of Wales Hospital. Of relevance, Walsh C in *Eather v Randwick City Council [2021] NSWLEC 1075* states at [38]:

"The fact of the particularly small departure from the actual numerical standard and lack of any material impacts consequential of the departure are sufficient environmental planning grounds to justify contravening the development standard."

Further, a lack of amenity impacts can be a reason advanced in support of environmental planning grounds (*Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161* at [49]). 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:

- i. The additional overshadowing resulting from the height variation is minimised given the variation is limited to the centrally located lift overrun. The bulk of the building which causes the majority of the additional overshadowing is compliant with the height of building development standard to minimise the impact as demonstrated in the architectural plans. Therefore, the extent of additional overshadowing as a result of the height variation is negligible and insignificant; and
- ii. The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to the compliant portion of the proposed development. As such, the loss of privacy caused by the height variation would be insignificant; and
- iii. The height breach will not result in any significant view loss as the subject site does not contain any significant views across or from the public domain. The maximum height variation is limited and any potential view loss would be caused by the approved building envelope. As such, the extent of view loss caused by the non-compliant element is considered to be insignificant.

2. Functional necessity to facilitate equitable access

The lift overrun is required to provide compliant access to Level 7. Removal of this element would compromise accessibility for people with a disability and not be equitable access contrary to the principles of universal design mandated by the ADG and NCC.

3. Consistency with desired future character

The proposal maintains a built form highly consistent with the existing approved consent for the site (DA/352/2019), with the minor height variation limited to rooftop services that do not alter the perceived massing or architectural expression of the development.

As confirmed in *Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*, compatibility is achieved when a proposal exists in harmony with its context, even where differences in height occur.

4. Orderly and economic use of land

As the lift overrun is an integral part of the building's design facilitating equitable access, refusal of the variation would prevent practical and safety use of the additional levels, undermining the orderly and economic use of this well-located urban site.

5. No alternative compliant design without unreasonable detriment

There is no feasible design alternative to eliminate the lift overrun without removing lift access to upper levels, which would directly reduce accessibility and liveability standards for future occupants, contrary to both the ADG and Housing SEPP objectives.

In summary, the lift overrun variation is justified on environmental planning grounds because it:

- Enables universal access consistent with legislative and policy objectives.
- Has negligible environmental or amenity impacts.
- Maintains compatibility with the approved built form and surrounding character.
- Facilitates efficient and functional building design and is minor in scale.

These planning grounds satisfy Clause 4.6(3)(b) and support the variation as a reasonable, necessary, and planning merit-based outcome.

6. The proposal meets aims and objectives of key planning documents

- a. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - Promoting the orderly and economic use and development of land through the redevelopment of an underutilised site (s.1.3(c));
 - Promoting good design and amenity of the built environment through a high-quality architectural response that is compatible with the site's context (s.1.3(g)).
- b. The variation to the height of buildings development standard will give better effect to the aims of Chapter 4 Design of residential apartment development, of the Housing SEPP. In particular:
 - Providing more sustainable housing outcomes in social and environmental terms, achieving urban planning policies (cl.2(3)(a)(i));
 - Achieving better built form and streetscape aesthetics (cl.2(3)(b));
 - Contributing to the provision of diverse dwelling types to meet population growth (cl.2(3)(f)); and
 - Supporting a variety of housing types, offering well-located, compact apartments suitable for a range of household types (cl.2(3)(g)).

These environmental planning grounds are specific to the proposal and site circumstances. The development appropriately distributes additional floor space to achieve a balanced built form outcome, with the height variation limited to the lift overrun only. This minor encroachment is functionally required and will have no discernible environmental, visual, or amenity impacts.

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

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

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development*

standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

Accordingly, there are sufficient environmental planning grounds to justify contravening the building height standard. The proposed variation is minor, reasonable, and consistent with planning objectives, policy intent, and public interest considerations.

6. Conclusion

This Clause 4.6 written request has been prepared in relation to the proposed minor variation to the 26m maximum building height development standard under Clause 4.3 of the Randwick LEP 2012 for the site at No. 10 Blenheim Street, Randwick. The proposal seeks a maximum building height of 26.34m, representing a minor variation of approximately 0.34m (1.3%), limited solely to the lift overrun.

Having regard to the assessment above, compliance with the maximum height development standard is considered unreasonable and unnecessary in the circumstances of this case. The proposal meets the objectives of the standard by delivering a building form that is compatible with the height, bulk, and scale of the desired future character of the locality, protects amenity, and provides an appropriate transition in scale.

The proposed variation is minor and technical, arising only from the provision of a compliant lift overrun to ensure equitable and accessible access to all levels in accordance with the Disability Discrimination Act and NCC requirements. The lift overrun is integrated within the architectural roof form, is recessive, and does not result in any adverse visual, environmental, or amenity impacts to the surrounding area or neighbouring properties.

Sufficient environmental planning grounds have been demonstrated to justify contravening the development standard, and strict compliance would be unreasonable, given the minor nature of the breach and the planning and public benefits of the proposal.

Accordingly, the requirements of Clause 4.6(3) are satisfied, and the proposed variation is considered to be in the public interest and worthy of Council's support.



Appendix 3: DCP Compliance Table

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.

2. Part B4: Landscaping and Biodiversity

Council is not satisfied that the proposed development meets the landscape requirements in accordance with Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at Referrals section of this report.

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 Referrals section of this report.

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 Referrals section of this report.

5. Section B7: Transport, Traffic, Parking and Access

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3. Parking & Service Delivery Requirements			
	Car parking requirements: <ul style="list-style-type: none"> • 1 space per 2 studios • 1 space per 1-bedroom unit (over 40m²) • 1.2 spaces per 2-bedroom unit • 1.5 spaces per 3 or more bedroom unit • 1 visitor space per 4 dwellings 	Refer to ADG parking rates.	Refer to ADG & E7 controls.
	Motor cycle requirements: 5% of car parking requirement	1 required. 1 space provided.	Yes
4. Bicycles			
	Residents: <ul style="list-style-type: none"> • 1 bike space per 2 units Visitors: <ul style="list-style-type: none"> • 1 per 10 units 	Refer to E7 parking controls.	Refer to E7 parking controls.

6. Part B8: Water Management

Council is not satisfied that the proposed development meets the water management requirements in accordance with Part B8 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer at Referrals section of this report.

7. Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2.	Site Planning		
2.1	Site Layout Options		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example 	Block layout dictated by E7.	Refer to E7
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
		Refer to E7 assessment	Refer to E7
2.2.2	Deep soil area		
		Refer to E7 assessment	Refer to E7 / ADG
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be: <ol style="list-style-type: none"> (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. For residential flat buildings: <ol style="list-style-type: none"> (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 8m² and a minimum dimension of 2m. 	Achieved.	Yes
		Provided. Refer to ADG assessment.	See ADG
2.3.2	Communal open space		
	Communal open space for residential flat buildings is to be: <ol style="list-style-type: none"> (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 	Not proposed. Not provided with previous DA.	No Refer to ADG

DCP Clause	Control	Proposal	Compliance
	playground equipment, seating and shade structures.		
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.	Refer to E7 assessment	Refer to E7
3.4	Setbacks		
3.4.1	Front setback		
	<ul style="list-style-type: none"> (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. (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. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways. 	Refer to E7 assessment	Refer to E7
3.4.2	Side setback		
	<p>Residential flat building</p> <ul style="list-style-type: none"> (i) Comply with the minimum side setback requirements stated below: <ul style="list-style-type: none"> - $14m \leq \text{site frontage width} < 16m$: 2.5m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: <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 	Refer to E7 assessment	Refer to E7

DCP Clause	Control	Proposal	Compliance
	<p>ventilation for the development and the adjoining residences.</p> <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>		
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.	Refer to E7 assessment	Refer to E7
4. Building Design			
4.1	Building façade		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(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.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>	Refer to E7 assessment	Refer to E7
4.2	Roof design		
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of</p>	Refer to E7 assessment	Refer to E7

DCP Clause	Control	Proposal	Compliance
	<p>internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - 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. 	Refer to E7 assessment	Refer to E7

DCP Clause	Control	Proposal	Compliance
4.4	External wall height and ceiling height		
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies. (iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Refer to E7 assessment	Refer to E7
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access. (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. 	Refer to E7 assessment Entry controls assessed under E7	Refer to E7
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. 	Refer to E7 assessment for relevant circulation controls	Refer to E7

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> - 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. <p>(ii) Use multiple access cores to:</p> <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. <p>(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.</p>		
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> <p>(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.</p> <p>(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.</p> <p>(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.</p>	Refer to E7 assessment	Refer to E7
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> <p>(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m². All ground floor apartments are to have direct access to a terrace.</p>	See ADG.	See ADG

DCP Clause	Control	Proposal	Compliance
4.9	Colours, materials and finishes		
	<ul style="list-style-type: none"> (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. 	Refer to E7 assessment.	Refer to E7
4.12	Earthworks Excavation and backfilling		
	<ul style="list-style-type: none"> (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. 	<p>Earthworks proposed to facilitate basement parking.</p> <p>Basement proposed is the same as that approved under DA/352/2019.</p>	<p>Earthworks suitable to facilitate parking.</p>
	<p>Retaining walls</p> <ul style="list-style-type: none"> (iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries. (v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the 	<p>Boundary retaining walls proposed to facilitate basement parking.</p> <p>Those retaining walls are the same as those</p>	<p>Acceptable based on prior court approval.</p>

DCP Clause	Control	Proposal	Compliance
	<p>neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing).</p>	approved under DA/352/2019.	
5. Amenity			
5.1	Solar access and overshadowing		
	<p>Solar access for proposed development</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.</p>		
	<p>Solar access for surrounding development</p> <p>(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.</p> <p>(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.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>		
5.2	Natural ventilation and energy efficiency		
	<p>(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.</p>	Refer to E7 and ADG assessment.	Refer to E7 and ADG assessment.

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> (ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building. (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. (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. (v) A minimum of 90% of residential units should be naturally cross ventilated. In 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. (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. 		
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 	<p>Insufficient ADG separation provided.</p> <p>U3,7,11,15,19, balconies would overlook neighbouring windows at 8 Blenheim Street.</p>	No

DCP Clause	Control	Proposal	Compliance
	open space or windows of the adjacent dwellings <ul style="list-style-type: none"> - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
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 - Walls to courtyards - Sealing of entry doors 	Refer to E7 and ADG assessment.	Refer to E7 and ADG assessment.
5.5	View sharing		
	<ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application. 	No unreasonable view impacts.	Suitable
5.6	Safety and security		
	<ul style="list-style-type: none"> (i) Design buildings and spaces for safe and secure access to and within the development. (iii) For residential flat buildings, provide direct, secure access between the 	Building design with regard to safety and security mostly suitable.	Basement circulation insufficient.

DCP Clause	Control	Proposal	Compliance
	<p>parking levels and the main lobby on the ground floor.</p> <p>(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.</p> <p>(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.</p> <p>(vi) Resident car parking areas must be equipped with security grilles or doors.</p> <p>(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.</p> <p>(viii) Provide adequate lighting for personal safety in common and access areas of the development.</p> <p>(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.</p> <p>(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.</p> <p>(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.</p>	Concern raised regarding basement stair exit leading to the exterior of the development and not internal.	

6. Car parking and access

6.1	Location		
	<p>(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.</p> <p>(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.</p> <p>(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.</p> <p>(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.</p> <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</p>	Refer to E7/ADG assessment.	Refer to E7/ADG assessment.

DCP Clause	Control	Proposal	Compliance
	<p>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>		
6.2	Configuration		
	<p>(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.</p> <p>(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.</p> <p>(iv) Provide basement or semi-basement car parking consistent with the following requirements:</p> <ul style="list-style-type: none"> (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: <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. 	Refer to E7/ADG assessment.	Refer to E7/ADG assessment.
7. Fencing and Ancillary Development			
7.1	Fencing		
	<p>(i) Fences are constructed with durable materials that are suitable for their purpose</p>	No proposed.	No

DCP Clause	Control	Proposal	Compliance
	<p>and can properly withstand wear and tear and natural weathering.</p> <p>(ii) Sandstone fencing must not be rendered and painted.</p> <p>(iii) The following materials must not be used in fences:</p> <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials <p>(iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.</p>	Not stated in SEE.	
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> <ul style="list-style-type: none"> (a) Studio apartments – 6m³ (b) 1-bedroom apartments – 6m³ (c) 2-bedroom apartments – 8m³ (d) 3 plus bedroom apartments – 10m³ 	See ADG.	See ADG.
7.7	Laundry facilities		
	<p>(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.</p> <p>(ii) Provide internal laundry for each dwelling unit.</p> <p>(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.</p>	<p>Clothes drying facilities able to be provided.</p> <p>Internal laundry able to be provided as indicated on drawings.</p>	Suitable
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. 	Not proposed.	N/A

8. Section E7: Housing Investigation Areas

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
PART A – Overarching Controls			

DCP Clause	Control	Proposal	Compliance (Yes/No/NA)
2.	Urban Design and Place-Making		
2.1	Guiding Principles		
	A statement must be submitted with all DAs that demonstrates consistency with the Guiding Principles of this 'Part A – Overarching controls' and the relevant objectives contained in 'Part B – Site specific controls'.	Submitted by Applicant.	Provided.
3.	Design Excellence		
	(a) All new development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP relating to design excellence (b) Buildings are to be designed to demonstrate at least 4-Star Building Standard certification rating (GBCA) performance (c) The design excellence of all new development proposals is to be reviewed by the Randwick Design Excellence Panel and their report taken into consideration as part of the development assessment.	Design Excellence requirements not satisfied. See Design Excellence referral comments. BASIX and NATHERS submitted.	No
4.	Density and Land Use		
	(a) The maximum FSR that can be achieved on a site is shown on the RLEP FSR Map (b) Health and education support land uses, and innovative enterprise / start-up businesses are encouraged in proximity to health and educational campuses (Randwick Hospital and UNSW) (c) Ground floor non-residential uses at prominent corner locations are encouraged to serve the residential areas of the HIAs (d) Active frontages are required for the ground floor level of development for business zoned areas and for the High Street frontage of Block C of the High Street HIA (to the extent allowed by permitted uses).	(a) See RLEP assessment. (b) Ground floor health services facility. (c) Not a corner site. (d) Active frontage proposed.	Suitable.
5.	Built Form		
	<u>Lot amalgamation</u>		
	(a) The minimum dimensions of an amalgamated redevelopment site (consolidated from multiple existing individual properties) are stated in 'Part B – Site specific controls' (b) When site amalgamation and redevelopment is proposed, sites between and adjacent to the proposed redevelopment site, are not to be limited in their future development potential by the redevelopment. (c) Where a development proposal unavoidably results in an isolated site, the	(a) Noted. (b) Not proposed. (c) Surrounding sites would not become isolated.	No amalgamation

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>applicant must demonstrate that negotiations between the owner/s of the lot/s have commenced prior to the lodgement of the DA and every reasonable attempt has been made to avoid the creation of an isolated site. The following information is to be included with the DA:</p> <ul style="list-style-type: none"> i. Evidence of written offer/s made to the owner of the isolated site and any responses received ii. Schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP and this DCP to achieve an appropriate urban form for the location, and an acceptable level of amenity iii. Schematic diagrams showing how the isolated site could potentially be integrated into the development site in the future in accordance with relevant provisions of the RLEP and this DCP to achieve a coherent built form outcome for the block 		
	<u>Building heights</u>		
	<p>(d) The maximum Height of Building (HoB) that can be achieved on a site is shown on the RLEP Height of Building Map</p> <p>(e) The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> • on sites with a maximum HoB of 16.5m and 17.5m – 5 storeys • on sites with a maximum HoB of 19.5m – 6 storeys • on sites with a maximum HoB of 24m – 7 storeys • on sites with a maximum HoB of 26m – 8 storeys <p>(f) Where a property is identified by Council to be subject to flooding, this may require a ground floor habitable space to be raised above the existing ground level (above the 1 in 100 year flood level, plus 0.5m freeboard). In the case of a raised ground floor level, the additional height should be absorbed into the overall height of the building, whilst continuing to meet ADG floor to ceiling standards and the required LEP maximum height of building level. In this case the full number of storeys stated in e) above may not be able to be achieved</p>	<p>(d) / (e) 26m zoning. 8 storeys proposed.</p> <p>(f) See engineering referral comments.</p>	Suitable.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	on the site. Council may at its discretion consider a minor exceedance for additional height depending on the required Floor Planning Flood Level.		
	<u>Street walls</u>		
	(g) In the High Street HIA and West Randwick HIA buildings must be designed with a street wall height of 6 storeys	7 storey wall height proposed.	No
	<u>Building setbacks</u>		
	(h) Developments are to comply with the minimum ground floor and upper-level setbacks illustrated in the relevant block diagrams in 'Part B – Site specific controls'	Proposed development is inconsistent with the setbacks required for the block plan.	No
	(i) Development that results in an exposed party wall is to incorporate architectural or vertical landscape treatments to improve the visual amenity of the wall prior to the completion of the adjoining building. Alternatively, a public art mural, to a design to Council's approval, is to be provided		
	<u>Building depth</u>		
	(j) The residential component of a development is to have a maximum building depth of 20m, including balconies. A maximum building depth of 22m, may be permitted on merit, subject to ADG compliance.	Previously approved 34m depth maintained. 352/2019	
6.	Through Site Links / Mid-Block Connections		
	(a) Through site links and mid-block connections are to be provided in accordance with the relevant block diagram in 'Part B – Site specific controls'	Site not required to provide through site link per the block plan.	Not required
	(b) Where new through site links are proposed (in addition to those required), the consent authority is to consider the need for and desirability of the links or connections having regard to the objectives of this section		
	(c) Through site links and mid-block connections are to have an easement for public access on title or covenant on title unless identified for dedication to Council		
	(d) Through-site links/ mid-block links are to be designed to: <ol style="list-style-type: none"> Have a minimum width as specified by the relevant block diagram in 'Part B – Site specific controls', and be open to the sky Be direct and publicly accessible 24 hours a day Allow visibility along the length of the link 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> iv. Be easily identified by users and have a public character v. Include signage advising of the publicly accessible status of the link and the places to which it connects vi. Be clearly distinguished from vehicle accessways vii. Align with breaks between buildings so that views are extended and there is less sense of enclosure viii. Provide opportunities for passive surveillance from existing and proposed development ix. Include materials and finishes (paving materials, tree planting, furniture etc.) integrated with adjoining streets and public spaces and be graffiti and vandalism resistant x. Ensure no structures (for example, electricity substations, carpark exhaust vents, swimming pools, etc) are constructed in the through-site link xi. Include landscaping to provide shade and assist in guiding people along the link while enabling long sightlines xii. Consider the privacy of existing adjoining development's indoor and outdoor living spaces. 		
7.	Laneway / Shared Way Zones		
	<ul style="list-style-type: none"> (a) Laneways are to be a minimum of 6 metres wide (for larger developments, a carriageway width greater than 6 metres may be required), provide sufficient width for turning and U-turn movements, and shall provide landscaping, lighting and high quality materials and finishes, and opportunities for art to enhance the pedestrian environment (b) All new development that fronts lanes shall be articulated to create visual interest and shall incorporate passive surveillance by orienting windows and balconies onto the lane (c) Ground floor uses fronting lanes shall incorporate openings onto the lane to contribute to the enjoyment and activation of the lane including, where possible, outdoor dining (d) Applicants are to negotiate Rights of Carriageway with adjoining property owners where required for access. 	No laneway.	No laneway
8.	Heritage Conservation		
	All development		

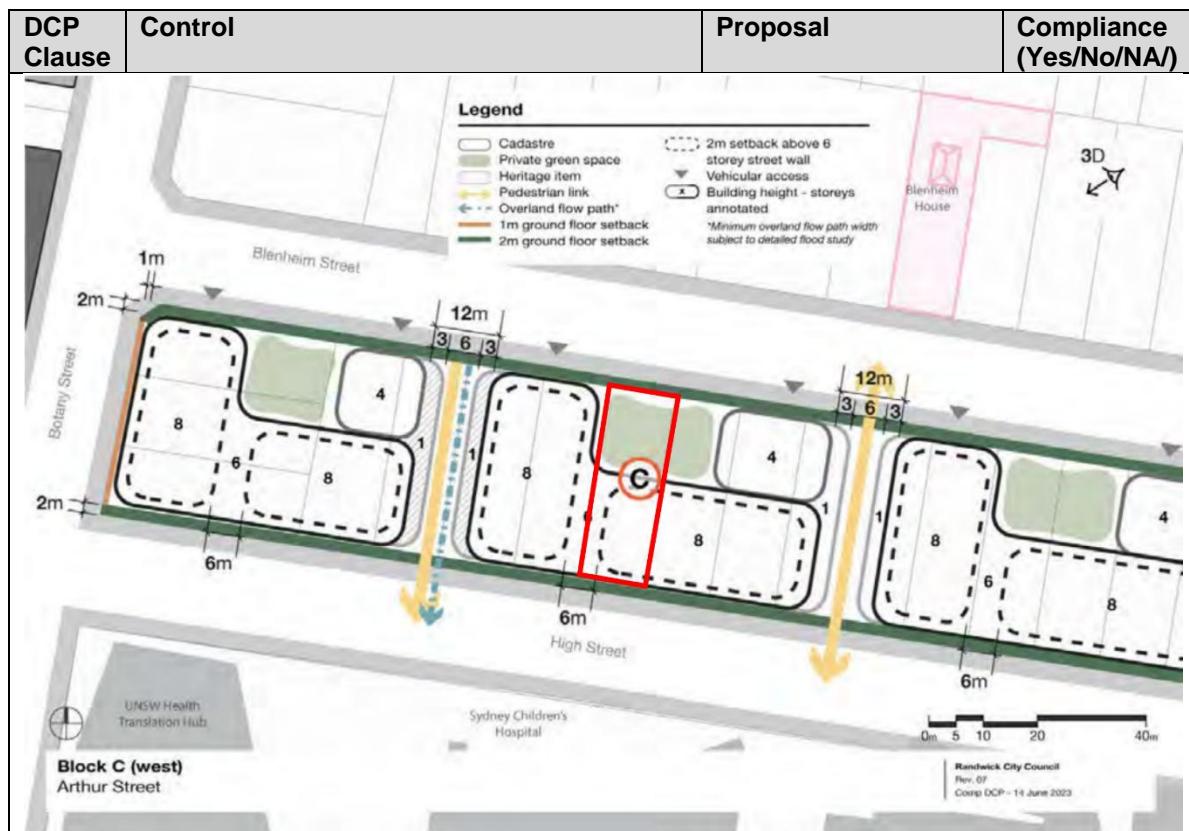
DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(a) All development involving or in the visual catchment of heritage items are to be planned and designed in accordance with the requirements of Section B2 Heritage of the Randwick DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p> <ul style="list-style-type: none"> • Adhere to the principles of the Burra Charter • Include with a DA submission, a Heritage Impact Statement (HIS) or Heritage Impact Assessment (HIA) in accordance with Council's advice • The HIS or HIA must consider the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage item/s within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories <p>(c) Development located within the vicinity of another Local Government Area (LGA) requires the preparation of a HIS to address the potential impact on adjoining or nearby heritage items or HCAs in the adjoining LGA</p>	See heritage referral comments.	See heritage referral comments.
	<u>Heritage items and contributory buildings</u>		
	<p>(d) Alterations and additions to heritage items and contributory buildings should conserve the original characteristic built form, and not significantly alter the appearance of the principal, or historically significant facade, except to remove detracting elements</p> <p>(e) Alterations and additions to heritage items and contributory buildings should:</p> <ul style="list-style-type: none"> • Retain, restore, and reinstate (where possible) significant features and building elements to principal elevations, shop fronts and visible side elevations, including, original openings and decorative features such as original doors, windows, sun hoods, awnings, lighting and historic signage • Remove unsympathetic alterations and additions, and building elements where possible 	See heritage referral comments.	See heritage referral comments

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> • Retain and encourage adaptive re-use of historic shop fronts and avoid unnecessary screening through planting, signage or other works • Retain and conserve the form and articulation of historic street frontages (such as the first structural bay/or first room to preserve inset verandas) and avoid 'facadism' • Be designed to be clearly distinguishable as new work when undertaking extensions, alterations, reconstruction, or repairs • Incorporate new doors and windows which are compatible with the positioning, size and proportions of original windows and doors • Ensure that conservation works including the reinstatement and restoration of historic fabric is appropriately balanced with the impacts of larger development on the site. Restoration works should enhance the quality of finishes, form and detail and incorporate materials, finishes and colours which are visually compatible with the heritage or contributory building and enhance its appearance • Ensure that new services are discretely integrated within and behind retained street frontages and not above awnings • Introduce new signage to be set below, or no higher than street awning level, as signage above the awning detracts from the detail and quality of historic fabric. 		
	<u>New development adjacent to heritage items and contributory buildings</u>		
	<p>(f) Development adjacent to heritage items and contributory buildings should:</p> <ul style="list-style-type: none"> • Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings • Incorporate podiums and building elements that reference the principal influence line of historic streetscapes, and are cohesive with the established street frontage 	<p>See heritage referral comments.</p>	<p>See heritage referral comments</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> • Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms • Ensure new street elevations maintain the vertical articulation and segmented character of historic building groups which provide variety to the streetscape and a sense of human scale, and avoid unrelated horizontally emphasised articulation • Provide contemporary new signage that complements the character of the contributory buildings • Ensure that new finishes to side elevations do not detract from street front detailing and finishes. <p>(g) Development should maintain and reinstate the emphasis of street corners and cross routes through reinforcement of historic height lines remaining at, and adjacent to intersections.</p>		
PART B – Site Specific Controls			
9.	Housing Investigation Areas		
9.2	High Street HIA (H2)		
9.2.3	Built Form		
	<p>(a) Introduce breaks in the High Street frontage to avoid a bulky and continuous wall of buildings</p> <p>(b) Establish a six storey street wall height</p> <p>(c) Provide an upper-level setback of 2m for eight storey buildings (above the six-storey street wall) to avoid excessive visual bulk</p> <p>(d) Locate north facing, private courtyard gardens for apartment residents along Blenheim Street to maximise solar access, to provide an attractive outlook and a transition in scale to Blenheim Street</p> <p>(e) Define street corners by including architectural corner elements and detailing including where relevant weather protection (awnings) and changes in materiality and finishes</p> <p>(f) The minimum dimensions of an amalgamated redevelopment site within the High Street HIA shall have no street frontage less than 30m, except for properties at 32 and 34 Blenheim Street, where a minimum frontage width of 20m applies. For corner sites, both frontages shall achieve this minimum length.</p>	<p>(a) 8.2m wide street frontage maintained.</p> <p>(b) No street wall proposed. No street wall approved as part of DA/352/2019.</p> <p>(c) 3m provided to balcony. No street wall.</p> <p>(d) Balconies provided.</p> <p>(e) Not a corner lot.</p> <p>(f) No amalgamation proposed.</p>	<p>No</p> <p>See key issues</p>
9.2.4	Public Domain and Access		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> (a) Create multiple public pedestrian links from High Street to both Arthur Street and Blenheim Street by providing through-block links in accordance Figure 14 and 16: Block C control plans (b) Position built form west of Botany Street to enable pathways that align with existing pedestrian crossings and desire lines from the UNSW Randwick Campus across High Street, to Arthur Street and to Wattle Park (c) Locate active ground floor uses such as health services facilities along High Street, at key street corner locations and around the southern courtyards to activate key streets and plaza spaces (d) Create a new north-south pedestrian street to provide a new green space with visual sightlines between the UNSW High Street Light Rail Station and Arthur Street (e) Introduce a pedestrian refuge island on Botany Street at the intersection with Blenheim Street to improve pedestrian crossing safety (f) Setback built form 2m along High Street and Blenheim Street, and 1m along Clara and Botany Street to widen the footpath to accommodate street tree planting (g) The landowner is to dedicate the pedestrian link and street setback strips of land to Council (as a condition of consent). The calculation of FSR and deep soil will be based on the original site area including the required pedestrian link/s and setback strip area/s (h) Vehicular access is to be provided as indicated on Figure 14 and 16 to avoid crossings of major pedestrian footpaths and proximity to vehicular intersections. Where sites are constrained, the preferred point of access may be reassessed on merit, if an improved design and safety outcome can be shown, following detailed analysis. 	<ul style="list-style-type: none"> (a) Site not identified in an area where link is to be provided. (b) N/A – Subject Site is east of botany street. (c) Ground floor health services facility proposed. (d) Site not identified in an area where link is to be provided. (e) N/A (f) 6m ground floor setbacks provided 3m setback for all other levels. (g) Recommended refusal. Front and rear setbacks do not appear suitable for dedication owing to garden beds and U1's POS being located within the dedication area. (h) Inconsistent. 	No
9.2.5	Individual City Block Plans		

D74/25



PART C – Design Detail

10.	Housing Mix		
	<p>(a) Development is to comprise a mix of apartment types, where gardens, adaptability and accessibility are more easily achievable for elderly people, families with children, or people living with disabilities</p> <p>(b) At least 30% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be one or two-bedroom dwellings, or both</p> <p>(c) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be three or more-bedroom dwellings</p> <p>(d) At least 20% of the total number of apartments of three bedrooms or more are to be located on the lower floors of the building</p> <p>(e) Family friendly apartments should be located at the ground and podium levels to utilise larger terrace areas for play, and in positions with direct sightlines of Communal Open Space for parental supervision.</p>	<p>(a) Mix of studio, 1 bed, and 2 bed apartments proposed.</p> <p>25 apartments total.</p> <p>(b) 7.5 required to be 1 or 2 bed apartments. 15 proposed. DA/352/2019 achieved this mix.</p> <p>(c) 5 required. None proposed. No three bedroom apartments previously provided through DA/352/2019.</p> <p>(d) N/A no three bedroom apartments.</p> <p>(e) ground floor 2 bedroom unit suitably considered family friendly.</p>	No
11.	Floor to Ceiling Heights		
	<p>(a) Minimum floor-to-ceiling heights (in accordance with the ADG) are to be provided as follows:</p>	Achieved.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> i) Ground Floor – 3.3m ii) First Floor and above – 2.7m <p>(b) The minimum floor-to-floor height of residential building levels should be 3.1m, unless detailed cross sections and engineering justifications are provided that establish the feasibility of a lesser height.</p>		
12.	Solar and Daylight Access		
	<p>(a) All development is to be designed and constructed to reduce the need for active heating and cooling systems by incorporating passive design measures through site planning and building design</p> <p>(b) All development is to be orientated to achieve optimum solar access and natural ventilation. To achieve this:</p> <ul style="list-style-type: none"> i) Shade north facing windows from direct summer sun with external horizontal shading devices such as awnings, upper floor balconies, eaves and overhangs ii) Utilise vertical shading devices such as vertical louvres or fins on east and west facing windows that consider the oblique angles of the sun. <p>(c) Solar access is to be provided in accordance with the recommendations of PART 4 of the Apartment Design Guide (ADG)</p> <p>(d) Buildings must ensure that areas of private or public open space are oriented to achieve the ADG recommended level of solar amenity</p> <p>(e) In relation to Co-Living (or student accommodation) proposals:</p> <ul style="list-style-type: none"> i) The design is to ensure that at least 60% of rooms achieve solar access during mid-winter for sites that have a north-south orientation ii) Common spaces such as lounge rooms or communal study areas are designed with a northerly aspect where possible iii) Atriums, roof windows, skylights or slots in the façade are to be designed to maximise solar access to rooms. 	<p>New units would receive adequate solar access.</p> <p>Redevelopment of 12 Blenheim is likely to result in significant north facing windows solar loss for apartments which front High Street.</p> <p>Upper floor balconies to provide suitable shading.</p>	See key issues. Future concerns.
13.	Acoustic Amenity		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<u>Residential uses</u>		
	<p>(a) All new development is to be constructed to achieve (at a minimum) the following acoustic amenity criteria for the residential component of the building in accordance with Australian Standard AS 2107:2016 based on an acoustic report specified in clauses d) and k). Applicants are encouraged to apply higher acoustic insulation to improve internal amenity for future occupants. For the purposes of this clause, the residential component includes dwellings situated within shop top housing, mixed use buildings, or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation.</p> <p>(b) In naturally ventilated spaces for the residential component, the repeatable maximum Leq (1hour) should not exceed:</p> <ul style="list-style-type: none"> i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when the windows are closed ii) 40 dB(A) in sleeping areas when windows are open (24 hours) iii) 45 dB(A) in living areas (24 hours) when the windows are closed iv) 50 dB(A) in living areas (24 hours) when the windows are open. <p>(c) Where natural ventilation cannot achieve the limits listed in clause b) the development is to include mechanical ventilation, air conditioning or other complying means of ventilation (in</p>	See environmental health referral.	See environmental health referral.
14	Natural Ventilation		
	<p>(a) All buildings are to be designed to comply with the ADG to maximise opportunities for natural ventilation and solar access by providing a combination of:</p> <ul style="list-style-type: none"> • corner apartments • dual aspect apartments • shallow, single-aspect apartments • openable windows and doors • other ventilation devices <p>(b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation and capturing prevailing breezes in summer</p> <p>(c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation</p>	<p>(a) (b) 100% of apartments cross ventilated.</p> <p>(c) Breezeway proposed.</p> <p>(d) ventilation through driveway suitable.</p> <p>(e) complies with ADG requirement for cross ventilation.</p> <p>(f) Suitable as proposed.</p>	Suitable

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> (d) Basements levels, including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation wherever possible (e) Apartment configuration and apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow (f) Where mechanical ventilation is considered necessary, prioritise 'low-tech' solutions, such as ceiling fans, over more complex and high energy use air conditioning systems. 		
15.	Articulation and Modulation		
	<ul style="list-style-type: none"> (a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual interest and light and shade to the façade (b) The design of buildings should include modulation to a similar dimension as the historical subdivision pattern of the site (c) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain (d) Building articulation should respect and complement the adjoining built form and contribute positively to the streetscape (e) Corner buildings are to be expressed by giving visual prominence to elements of the façade e.g. a change in building articulation, material or colour, roof expression or increased height (f) Corner buildings should be designed to add variety and interest to the street and mark an important junction in the urban fabric 	<p>Suitable articulation provided.</p> <p>(c) / (d) extensive blank boundary wall proposed on eastern elevation. Lacks articulation by way of varied materiality and recessing.</p>	No
16.	Materials and Finishes		
	<ul style="list-style-type: none"> (a) External walls are to be constructed of high quality and durable materials and finishes (b) Materials that may be subject to corrosion, degradation or high maintenance are to be avoided (c) The architectural treatment of street facades is to provide a well-resolved composition that breaks down the building scale and expresses a clear hierarchy of architectural elements (d) A complimentary combination of finishes, colours and materials are to be used to articulate building facades 	<p>Rendered and painted upper levels not supported by DEAP.</p>	Not suitable

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> (e) The design of windows should be such that they can be cleaned from inside the building (f) For sites adjoining heritage and contributory buildings, materials and finishes of the new building is to compliment and respect the heritage or contributory building (g) Roof levels of buildings should be expressed in a contemporary mansard roof style, employing sloped faces, ribbed metal finish and be of a colour that is mid-to-dark grey (ie. visually recessive). The mansard roof form should have windows and balconies that are crisp and simply detailed, and expressed as secondary elements to the overall mansard roof form (h) The use of face brickwork is encouraged, due to its capacity to contribute scale, detail, texture and a rich colouring to the building facade (i) Materials with low embodied energy and comprised of recycled content should be prioritised (j) Low Volatile Organic Compound (VOC) emitting materials should be selected e.g. paints, adhesives, sealants and flooring (as per Randwick DCP Part B3 Section 2). (k) The adaptive re-use of existing building facades, building structures and fittings should be considered (l) FSC certified timber from plantation or sustainable managed re-growth forests, should be utilised wherever possible. 		
17.	Building Awnings, Entry and Circulation		
	<ul style="list-style-type: none"> (a) Design building entry points to be clearly identifiable and visible from the public domain, provide shelter from elements and assist in defining public and private space (b) Provide clear sightlines into and out of building entries (consider CPTED) (c) Building entry points and circulation spaces should be naturally lit and have a source of natural ventilation (d) Position stairs to provide a convenient and intuitive alternative to mechanical lifts for vertical movement throughout the building (e) Where ground floor dwellings face street frontages, encourage individual entrances to assist in modulating of the building frontage and to improve passive surveillance 	<ul style="list-style-type: none"> (a) Achieved. (b) Achieved. (c) Achieved. (d) Poor stair positioning when exiting basement. (e) GF unit accessed via same entrance. Narrow site and so suitable in this regard. (f) Services appropriately located. 	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(f) Locate utility services away from building entries and main street frontages to reduce presenting blank walls to public areas</p> <p>(g) Building signage should contribute to the contemporary architectural expression, rather than detract</p> <p>(h) A building entrance should include a system to capture pollutants from occupants' shoes and from outdoor air which can be easily maintained e.g. entryway grills, mats and air seals.</p>	<p>(g) Signage not proposed.</p> <p>(h) Not proposed.</p>	
18.	Landscaped Area		
	<p>(a) The minimum Gross Landscape Area, Deep Soil Permeable Area and Tree Canopy Cover must be met for development proposals, as per Table 2 below.</p> <ul style="list-style-type: none"> • West Randwick and Kingsford South (E1): 50% gross landscape area, 7% deep soil permeable area, 25% tree canopy cover • High Street: 50% gross landscape area, 15% deep soil permeable area, 25% tree canopy cover • Magill Street and Kingsford South (R3): 60% gross landscape area, 35% deep soil permeable area, 25% tree canopy cover <p>(b) Green walls can only contribute up to 10% of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect</p> <p>(c) Green walls require a Maintenance Plan to be provided by a qualified Landscape Architect and/or Horticulturalist at DA stage to identify the method of accessing the wall during the establishment period and ongoing life, including the maintenance regime for the plant material, the ongoing maintenance of any irrigation system and plant media and the regular replacement of sick or dead plants as necessary</p> <p>(d) Deep soil permeable surfaces must have a width of not less than 900mm</p> <p>(e) Native species must comprise at least 50% of the plant schedule, incorporating a mix of locally indigenous trees, shrubs and groundcovers appropriate to the area</p> <p>(f) rooftops may include communal food farms and food production areas</p>	<p>(a) High street. 7% achieved.</p> <p>Refer to landscaping comments.</p>	<p>Refer to landscaping comments.</p> <p>Non-compliant with DCP provisions.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>(g) Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified Landscape Architect and incorporated into the Development Application (DA) documentation</p> <p>(h) Where green roofs and green walls are provided, these shall comply with requirements contained in Chapter 4 of Section B4 Landscaping and Biodiversity of the Randwick DCP</p> <p>(i) Despite the provision of a green wall, all facades are to meet design excellence requirements including building articulation and modulation specified in Part 15 of this E7 section of the DCP</p> <p>(j) In addition to the requirements of Section B4 Landscaping and Biodiversity of the Randwick DCP, all DA for sites within the HIAs must submit a Landscape Plan addressing the following requirements:</p> <ul style="list-style-type: none"> i) Quantity of landscaping provided on site ii) Scaled drawings of all areas iii) How landscaping would complement the architectural style of the building and assist in its presentation to the streetscape and surroundings iv) Rainwater harvesting and other irrigation methods proposed v) Full construction details of soil profile, method of attachment to the building, and drainage/waterproofing vi) Engineering certification confirming the building can withstand planting and associated structures vii) Where planting is proposed 'on structure' ie. on that part of a basement which extends beyond the building footprint, roof tops or within planter boxes, the space must be designed and constructed to contain a minimum soil depth of: <ul style="list-style-type: none"> • 450mm for grass and ground covers • 600mm for shrubs • 900mm for small trees • 1200mm for large trees. <p>(k) A minimum of one indigenous canopy street tree that will attain a minimum mature height of 6m, must be planted at maximum spacing of 7.5m, at a minimum distance of</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	600mm from the kerb and/or footpath, and/or masonry fence or retaining wall. Street trees must be selected in accordance with Council's Street Tree Masterplan.		
19.	Transport, Parking and Access		
	<u>Active transport</u>		
	(a) Bicycle parking and end-of-trip facilities within the HIA are to be provided in accordance with the rates outlined in Table 3 (b) Where swimming pools and similar amenities are proposed in residential developments, bicycle parking should be co-located to utilise proposed facilities (such as showers and changing rooms) as end-of-trip facilities (c) At least 25% of bicycle parking spaces should be E-bike charging capable (not elevated rack storage) with suitable power outlets.	27.5 bikes spaces required. No commercial use proposed. No end of trip facilities required. 16 bike spaces proposed, 8 of which provide e-bike charging.	No
	<u>Car parking provision</u>		
	(a) Vehicle parking within the HIAs is to be provided in accordance with the rates outlined in Table 4. These rates are one-third less than the standard TfNSW rates and are consistent with the Kensington and Kingsford Town Centre rates. Parking requirements for all other development types not specified in the table below are contained in Section B7 Transport, Traffic, Parking and Access, Section 3.2 Vehicle Parking Rates of the Randwick DCP (b) Where a variation to the DCP Car Parking rates is sought, the proponent shall provide a justification in accordance with Section B7 Chapter 3.3 Exceptions to Parking Rates of the Randwick DCP (c) Development must provide one electric vehicle charging point per five car parking spaces and demonstrate appropriate electrical infrastructure and capacity for the remaining Lot Owners (Eligible Lot Owner) to install a vehicle charging point at a later date (d) Development must install appropriate electrical infrastructure and capacity to allow at least 20% of Lot Owners (Eligible Lot Owner) to charge an electric vehicle at any one time in their own car space. Such infrastructure should:	Refer to ADG parking assessment and engineering referral. Parking insufficient.	See ADG and engineering referral Parking insufficient.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> i. Allow for a minimum of 16A single phase charging per Eligible Lot Owner ii. Be easily accessible for any Lot Owner to run a dedicated circuit to their own car space for the purposes of EV charging iii. Be monitored by the Owners Corporation or a 3rd party on behalf of the Owners Corporation iv. Include capacity for a billing system to account for electricity used, time or a flat fee v. Measure electricity used by using utility grade, NMI registered electricity meters. <p>(e) The installation of two 'Level 2' AC fast charging EV charging points is required in the common parking areas. The circuit is to be suitably located to provide for convenient, shared access for residents (and where relevant, commercial users). The charging point should:</p> <ul style="list-style-type: none"> i) Be equipped with 62196-2 Type 2 socket ii) Provide up to 22kW or 32A three phase charging per port iii) Be installed on a dedicated circuit iv) Allow for monitoring and individual billing payment through an OCPP compatible software back end v) Provide dedicated space for electric vehicles to park and charge <p>(f) Car share spaces are to be provided in accordance with Section B7 Chapter 2.2 Car Share of the Randwick DCP and accessible without the need to enter through a secure car parking area</p> <p>(g) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plan is to set out:</p> <ul style="list-style-type: none"> i) Future travel mode share targets, specifically a reduction in car driver mode share ii) Travel demand management strategies to encourage sustainable travel iii) Initiatives to implement and monitor travel measures such as car and bike share iv) Alignment with Control i) of Section B7 Chapter 3.3 Exceptions to Parking Rates of the Randwick DCP 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<ul style="list-style-type: none"> (a) Where practical, parking access and / or loading is to be provided from secondary streets (as opposed to classified roads and / or major roads such as Alison Road, Anzac Parade, Botany Street and High Street) (b) Parking access and / or loading must be setback at least 6m from an intersection or rear lane boundary to ensure all vehicles are wholly contained on site before being required to stop (c) Parking access and / or loading areas are to be designed as recessive components of the building elevation to minimise the visual impact on the streetscape (d) All vehicles should be able to enter and leave the site in a forward direction (e) Parking is to be accommodated underground where possible (f) Sub-basement car parking is to be no more than 1.2m above existing ground level (g) Basement carpark access must comply with the requirements of Section B8 Water Management of the Randwick DCP. 	<ul style="list-style-type: none"> (a) access provided from Blenheim. (b) Suitable distance provided. (c) Parking access design with regard to streetscape is suitable. (d) Achievable. (e) Proposed. (f) Not proposed. (g) See engineering referral. 	Suitable
20.	Sustainability		
	<u>General</u>		
	<ul style="list-style-type: none"> (a) New developments with a cost of works of \$3 million or greater are to achieve a minimum 4 Star Green Buildings certification rating (b) All development must address the requirements of Section B3 – Ecologically Sustainable Development of the Randwick DCP (c) New development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP relating to design excellence, particularly sustainable design principles, renewable energy sources and urban heat island effect mitigation 	<ul style="list-style-type: none"> (a) Works proposed through Application do not exceed 3 million. (b) complies with BASIX. (c) 6.11 not met. See design excellence referral. 	No
	<u>Energy</u>		
	<ul style="list-style-type: none"> (d) New developments are to sign up to a minimum three-year 100% renewable power contract with an Australian Government endorsed energy provider and evidence of the future contract provided to Council at DA stage (e) New developments are encouraged to be 100% electric (no natural gas) (f) All development is encouraged to incorporate PV rooftop solar and battery 	See BASIX.	Suitable

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<p>storage for the capture and use of energy for lighting, ventilation and services within communal spaces and for residential apartments</p> <p>(g) Where photovoltaic (PV) panels are proposed it is desirable that the panels be parallel and incorporated into the design of the building</p> <p>(h) Efficient lighting (LED), rainwater tanks and building insulation are to be included in the design of buildings.</p> <p>(i) New development must provide a screened outdoor area with an appropriate orientation for the purpose of communal clothes drying</p> <p>(j) All developments are to incorporate energy efficient fittings and systems for lighting including:</p> <ul style="list-style-type: none"> i) Natural lighting where possible ii) Energy efficient lights such as LEDs iii) Movement and lighting level sensors and timers to ensure lighting is only used when required 		
	Waste		
	<p>(k) All development must address the requirements of Section B6 Recycling and Waste Management of the Randwick DCP</p> <p>(l) All developments must provide a space for:</p> <ul style="list-style-type: none"> • Storage and sorting of problem waste such as E-waste, clothing, and residential hazardous waste • FOGO (Food Organics and Garden Organics) household rubbish collection bin storage and handling <p>(m) New developments must provide an internal bulky waste storage area of 20m² for the temporary storage of periodic bulky waste collection. The internal bulky waste storage area must:</p> <ul style="list-style-type: none"> • Be situated in a location that is easily accessed by external waste collection services • Be weatherproof and screened from public areas • Remain visible from general waste / bin storage areas to encourage re-use of items by other residents <p>(n) New development, other than development that is minor or ancillary in nature, is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.</p>	<p>See development engineering referral comments.</p>	<p>See development engineering referral comments.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	<u>Materials</u> (o) New development construction is to be long-life, robust and use durable materials and finishes and utilise reduced carbon materials e.g. low carbon concrete, recycled aggregate, etc. (p) Use of recycled materials, such as bricks, timber and concrete, are encouraged (q) All development must specify light coloured roof colours to reduce building heat load and energy use for cooling in summer months. Consideration is required of potential glare impacts on neighbours.	Materials suitable in this regard.	Suitable – subject to further refinement as noted above.
	<u>Transport</u> (r) Reduced car parking rates apply to the HIAs to reduce basement parking structure and in recognition of the proximity to public transport. Refer to Chapter 19 Transport, parking and access of this DCP for applicable rates (s) Car share provision is strongly encouraged within a development and HIA car parking rates can be further reduced when car share spaces are provided. Refer to Section B7 Transport, Traffic, Parking and Access of the Randwick DCP (t) Electric Vehicle (EV) and bike charging facilities and electrical infrastructure is required to be provided on common property and must include signage and a fixed bicycle rack or rail in accordance with Chapter 19 Transport, parking and access of this DCP section.	(r) Noted. (s) Car share space provided. (t) Bike charging provided in basement. No car chargers shown on plans.	No
	<u>Design and landscaping</u> (u) ADG solar access and cross ventilation standards are to be met in the development (v) All development should incorporate passive and low-tech solutions to managing solar access and heat load and cross ventilation. These may include: <ul style="list-style-type: none">Appropriate shading of the building's windows with fixed overhangsShading blades for respectively north and east facing facadesLimiting openings on the west facing facades of buildingsProvision of ceiling fans to limit the need for air conditioning (w) Minimum tree canopy requirements apply to new developments to realise the Randwick City 40% tree canopy target for	Suitable as assessed by other sections of this report.	Suitable

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	the LGA by 2036. Refer to Table 2 in Section 18 of this DCP.		
21.	Water Management		
	(a) All new fittings and fixtures are to be installed with the highest Water Efficiency Labelling and Standards (WELS) scheme star rating available at the time of development (b) Dual piping for future use of greywater or blackwater systems is encouraged to be provided in all new multi-unit residential development (c) All development must address Section B8 – Water Management of the Randwick DCP in relation to water conservation, groundwater and flooding, overland flow paths, on-site detention and Water Sensitive Urban Design (WSUD) (d) The ground level of a development is to be constructed above the stipulated 1 in 100 year flood level plus freeboard. Additional overall building height will only be considered by Council to the extent of the flood level above natural ground level for flood prone properties, and will be assessed on a site-specific merit basis	Refer to BASIX and engineering comments.	BASIX / Engineering referral
22.	Aircraft Operations		
	(a) Development involving the use of cranes during construction and other structures such as light poles must ensure compliance with Clause 6.8 of the Randwick LEP in relation to Airport Operations (b) Applications for building cranes or like structures during construction must meet the requirements of Section F3 – Sydney Airport Planning and Noise Impacts of the Randwick DCP	Relevant airspace form submitted. No objection from Sydney Airport (see referral) Drawings suitable with requirements of F3. Not in or in immediate proximity to ANEF.	Suitable
23.	Affordable Housing		
	(a) All development within the HIAs must contribute towards the provision of affordable housing at a contribution rate of either 3% or 5% as stated in the Plan (b) Affordable housing contributions are to be provided in accordance with the HIA Affordable Housing Plan 2023 (c) The affordable housing contribution rate is to apply to the total residential floor area component of the development (d) Contributions towards affordable housing are to be provided through a dedication of	Recommended refusal.	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/)
	affordable housing units on site / 'in-kind' or as a monetary contribution 'in-lieu' of affordable housing units.		
24.	Air Quality		
	<p>(a) All developments that adjoin a main road and at Council's discretion are to include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants</p> <p>(b) DA are to submit a statement which explains how the proposal has addressed the NSW Government 'Development Near Rail Corridors and Busy Roads – Interim Guideline'</p> <p>(c) The air intakes for mechanical ventilation are to be located well away from major roads or the pollution source (eg on top of tall buildings) or provided with filtration to remove particulates</p> <p>(d) DA for sensitive land uses such as childcare centres, schools or aged care facilities must submit an air quality study prepared by a suitably qualified expert demonstrating how air pollution exposure and health risks will be mitigated</p> <p>(e) Vegetative screens should be investigated where appropriate to assist in maintaining local ambient air amenity and to improving aesthetics and visual impacts from an adjacent roadway.</p>	See environmental health referral.	See environmental health referral. No concerns noted by health team.

Responsible officer: Dean Lidis, Environmental Planning Officer

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