

Randwick Local Planning Panel (Public) Meeting

Thursday 13 November 2025



RANDWICK LOCAL PLANNING PANEL (PUBLIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Thursday, 13 November 2025 at 1pm

Acknowledgement of Country

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

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

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

Development Application Reports

D64/25 18 Dolphin Street, Randwick (DA/872/2025)..... 1

Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D64/25

Subject: 18 Dolphin Street, Randwick (DA/872/2025)

Executive Summary

Proposal:	Alterations and additions to an approved multi dwelling housing development including construction of a new level (4th storey) comprising two (2) residential units and change of use to a residential flat building (Variation to Building Height).
Ward:	East Ward
Applicant:	Architectit Pty Ltd
Owner:	18 Dolphin Street Pty Ltd
Cost of works:	2,474,781.13
Reason for referral:	The development contravenes the development standard for building height by more than 10%; and The development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings; and More than 10 unique submissions by way of objection were received.

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 872/2025 for Alterations and additions to an approved multi dwelling housing development including construction of a new level (4th storey) comprising two (2) residential units and change of use to a residential flat building (Variation to Building Height), at No. 18 Dolphin Street, Randwick for the following reasons:

1. Pursuant to Clause 2.3 of RLEP 2012, the proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone in that it does not recognise the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents, and does not encourage housing affordability. In addition, the Applicant has failed to demonstrate that if the precinct is undergoing transition, that the development is compatible with the desired future character of the precinct.
2. Pursuant to Clause 4.6 of RLEP 2012 and Section 180(3)(b) of the SEPP (Housing) 2021, the proposed variation to the maximum building height development standard is not supported as the Applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.
3. Pursuant to section 147 of the SEPP (Housing) 2021, the proposed development was not supported by the Randwick Design Advisory Panel in that the quality of the design was inadequate for the proposed building. In addition, the development fails to demonstrate consistency with the following design criteria of the ADG:
 - a. Section 1B 'Local Character and Context'.
 - b. Section 1C 'Precincts and Individual Sites'.
 - c. Section 3F 'Visual Privacy'.
 - d. Section 3G 'Pedestrian Access and Entries'.
 - e. Section 4A 'Solar and Daylight Access'.
 - f. Section 4K 'Apartment Mix'.
4. Pursuant to Clause 6.2 of RLEP 2012, the Applicant has failed to sufficiently demonstrate that the existing geotechnical information is adequate for the proposed works for which development consent is required.

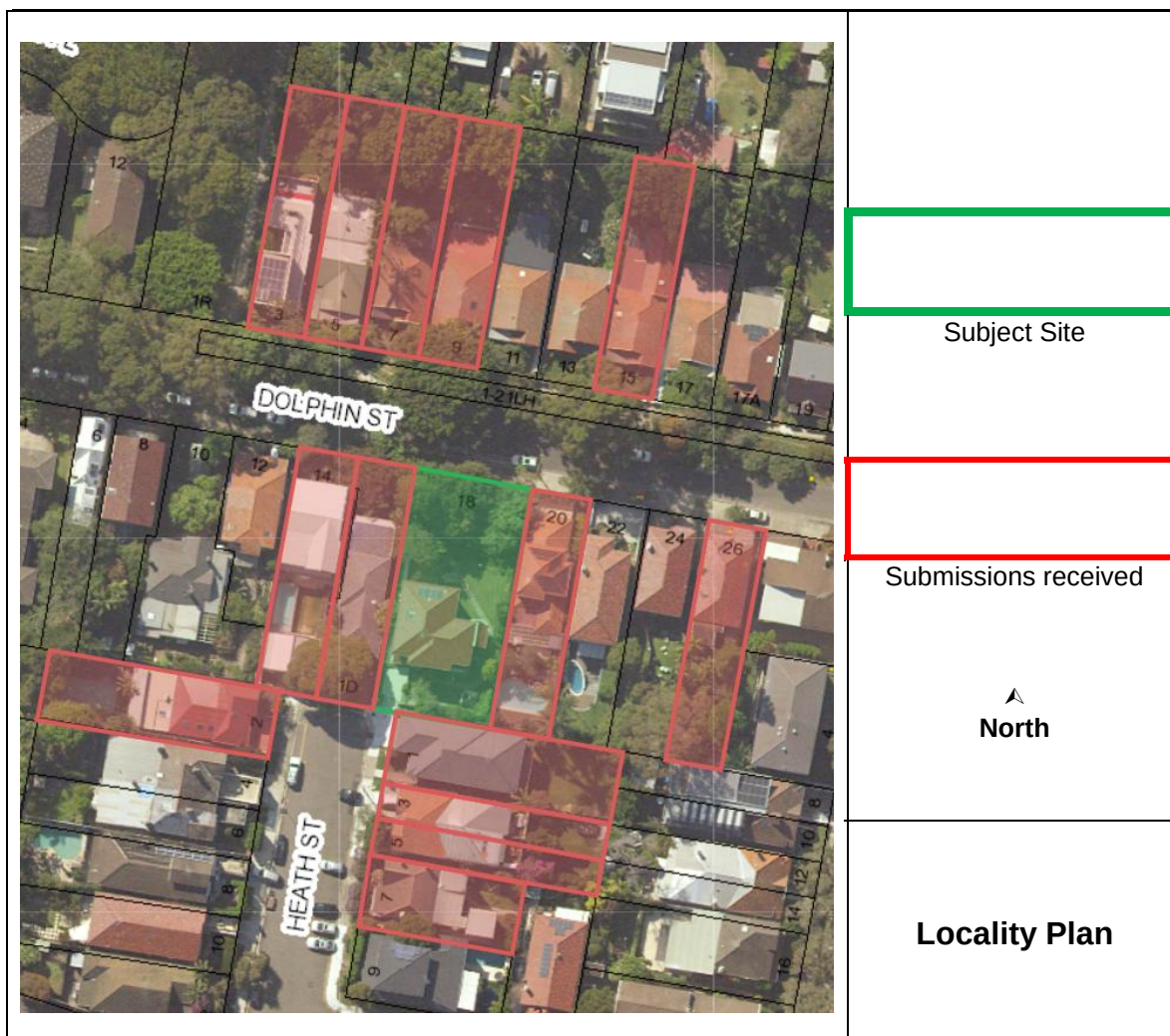
D64/25

D64/25

5. Pursuant to clause 6.10 of RLEP 2012, the Applicant has failed to sufficiently demonstrate that adequate arrangements have been made for electricity supply to the proposed development.
6. Pursuant to clause 6.11 of RLEP 2012, the proposed development does not exhibit design excellence.
7. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the following controls in the Randwick Development Control Plan 2013:
 - a. Part C2: Medium Density Residential
 - i. Section 3.4 'Setbacks'.
 - ii. Section 4.1 'Building façade'.
 - iii. Section 4.2 'Roof design'.
 - iv. Section 4.4 'External wall height and ceiling height'.
 - v. Section 4.5 'Pedestrian Entry'.
 - vi. Section 5.1 'Solar access and overshadowing'.
 - vii. Section 5.3 'Visual privacy'.
 - viii. Section 5.6 'Safety and Security'.
8. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development as not been adequately demonstrated.
9. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.
10. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to architectural plans, design analysis, context analysis, view sharing, acoustic report, electricity supply, performance solution report, geotechnical report, structural engineering report and market analysis.

Attachment/s:

Nil



D64/25

1. Executive summary

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

- The development contravenes the development standard for building height by more than 10%
- The development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings
- More than 10 unique submissions by way of objection were received

The proposal seeks development consent for alterations and additions to an approved multi dwelling housing development including construction of a new level (4th storey) comprising two (2) residential units and change of use to a residential flat building.

The proposal seeks to benefit from the recently in-force 'Low and Mid Rise Housing' (LMR) provisions of the Housing SEPP that allow for the subject site, being within the outer 'LMR' area, to have a building height of 17.5m (and up to 4 storey) and FSR of 1.5:1, respectively.

Council notes that on 7 October 2025, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Council's deemed refusal of the development application.

The key issues associated with the proposal relate to suitability of the site, Desired Future Character, primary and secondary street setback, building separation, incompatible design with the approved multi-dwelling housing on site, residential amenity impact including bulk and scale / visual impact, solar access and visual privacy, BCA compliance and insufficient information. The extent of issues is evident throughout this report, including many jurisdictional matters of consideration that the Applicant has failed to satisfy through their application.

In this regard, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 18 Dolphin Street, Randwick and is legally described Lot 6 Sec 7 DP 678. The site is 827.8m², is regular in shape and has a 20.12m frontage to Dolphin Street to the north and a 4.86m secondary frontage to Heath Street to the south. The site is currently under construction for six (6) x 3 storey multi dwelling housing with roof terraces approved under DA/371/2019 and DA/371/2019/A.

A 0.915m wide Right of Way runs across the rear boundary of the site granting pedestrian access to 20 and 22 Dolphin Street.

The site falls approximately 6.16m from the rear to the front. The topography and layout of Dolphin Street is unique at this location, with a steep cross fall and split-level topography. Properties on the northern side of Dolphin Street are situated substantially below the street level, with a difference of approximately 7 metres. There is a significant longitudinal fall across the subject urban block, dropping approximately 14 metres from Judge Street in the west to St Luke Street in the east.

Dolphin Street is a narrow two-way road that functions effectively as a single-lane carriageway, permitting only one vehicle to pass at a time. The street provides limited on-street parking and features a footpath on only the southern side. Properties on the southern side of Dolphin Street present garages and retaining walls to the frontage whereas properties on the northern side do not have parking facilities due to the distinctive topography.

Surrounding development is characterised by established dwelling houses that are part of the R3 Medium Density Residential zone, with older RFBs located further to the east and newer medium density development to the north and south. The adjoining property to the east at 20 Dolphin Street contains a two storey dwelling house with swimming pool towards the south and vehicular access from Dolphin Street. The adjoining property to the west at 1D Heath Street contains a two storey dwelling house with vehicular access from Heath Street. The adjoining property to the south at 1 Heath Street was vacant at the time of site inspection on 2 October 2025.

The subject site is a double-sized allotment compared with the narrower allotments of surrounding properties. A Local Heritage Item is located to the north of the site as part of the Dolphin Street road reserve, identified as item L353 "Dolphin Street sandstone retaining wall and embankment".



Figure 1. Dolphin Street frontage looking east (Source: Council Officer)



Figure 2. Subject site viewed from Heath Street (Source: Council Officer)

D64/25



Figure 3. Properties on the northern side of Dolphin Street positioned well below the street level
(Source: Council Officer)

3. Relevant history

Previous Consent

- DA/371/2019 was approved by Randwick Local Planning Panel on 14 May 2020 for demolition of existing structures and construction of 6 x 3 storey multi dwelling housing with roof terraces, basement parking and storage, landscaping and associated works.
- DA/371/2019/A was approved by Land & Environment Court on 27 May 2021 for Section 4.55(2) modification of approved development including reconfigured basement to accommodate car stackers, increased floor area at Level 2 towards the east, general layout changes and changes to façade. Original Consent: Demolition of existing structures and construction of 6 x 3 storey multi dwelling housing with roof terraces, basement parking and storage, landscaping and associated works.

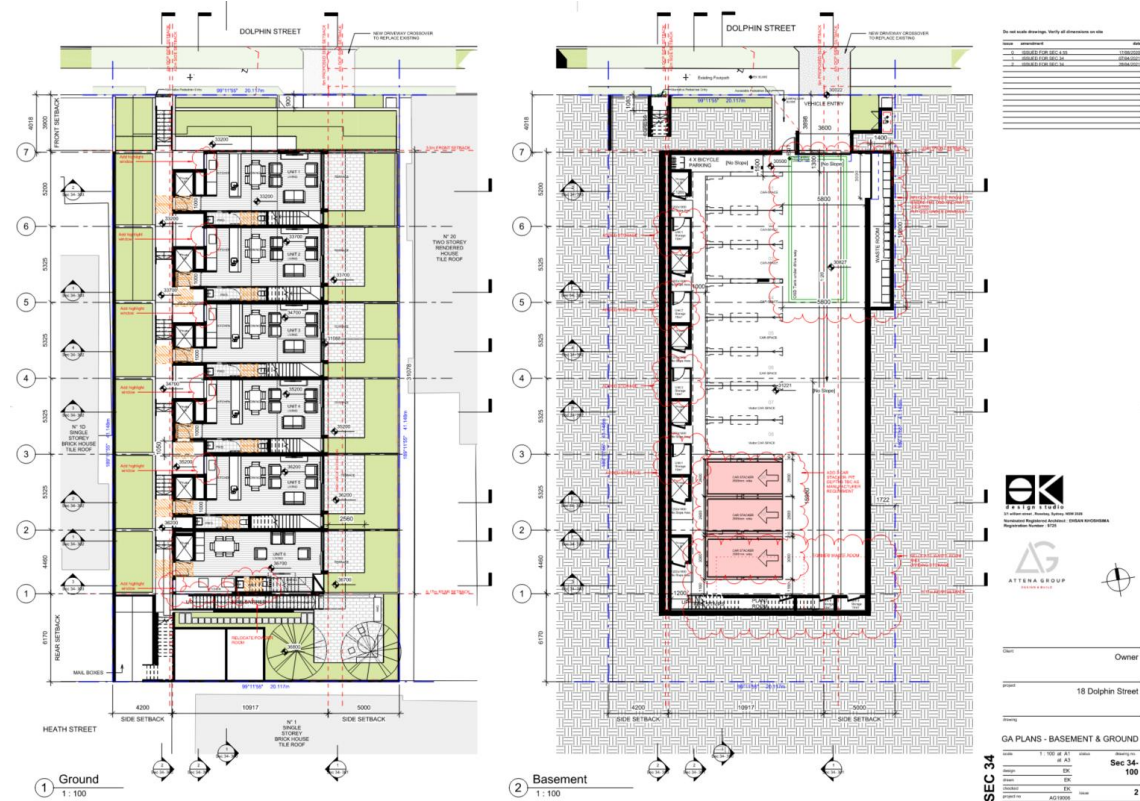


Figure 4. Ground and basement level plans approved under DA/371/2019/A (Source: EK Design Studio)



Figure 5. Levels 1 & 2 plans approved under DA/371/2019 (Source: EK Design Studio)

D64/25

D64/25

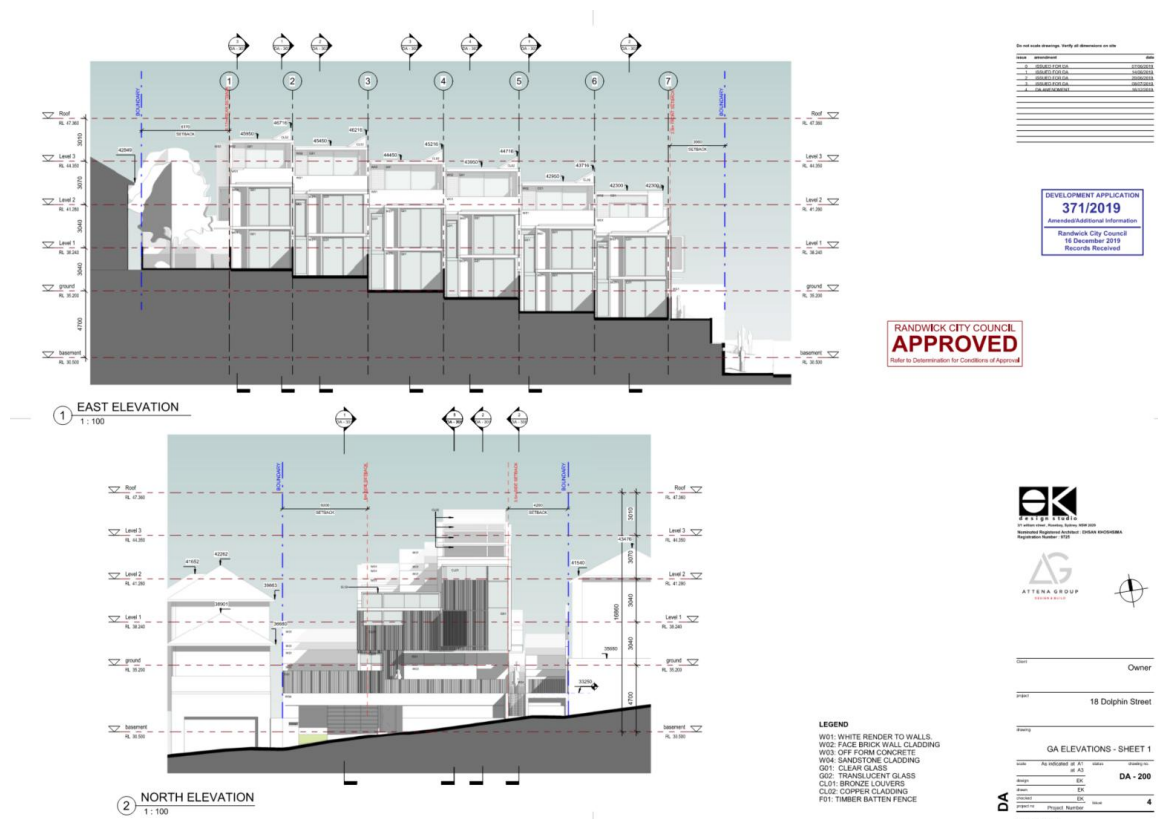


Figure 6. North & East Elevations approved under DA/371/2019 (Source: EK Design Studio)

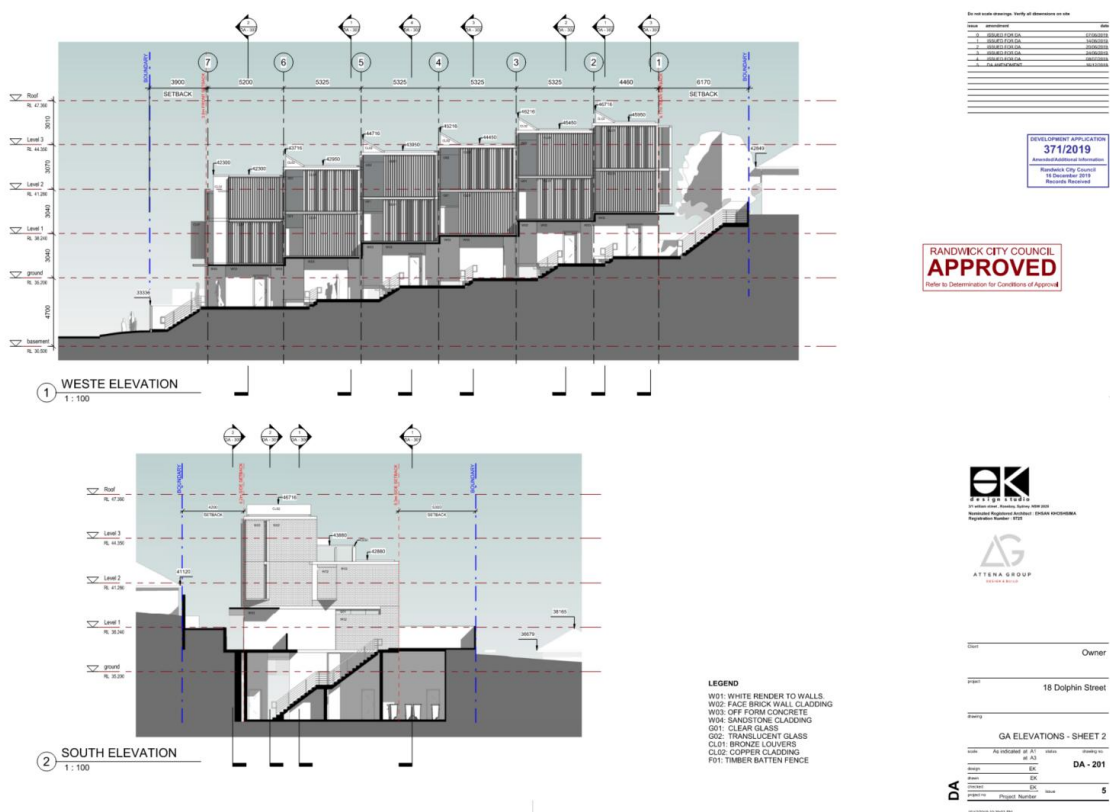


Figure 7. South & West Elevations approved under DA/371/2019 (Source: EK Design Studio)



Figure 8. Photomontage submitted to Council under DA/371/2019 (Source: EK Design Studio)

Subject application

- 21 August 2025 – Subject application was lodged with Council.
- 2 October 2025 – Site inspection was carried out. The assessing officer did not enter into the construction site.
- 7 October 2025 – The Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the 'deemed refusal' of the subject development application.

4. Proposal

The proposal seeks development consent for alterations and additions to an approved multi dwelling housing development including construction of a new level (4th storey) comprising two (2) residential units and change of use to a residential flat building (Variation to Building Height).

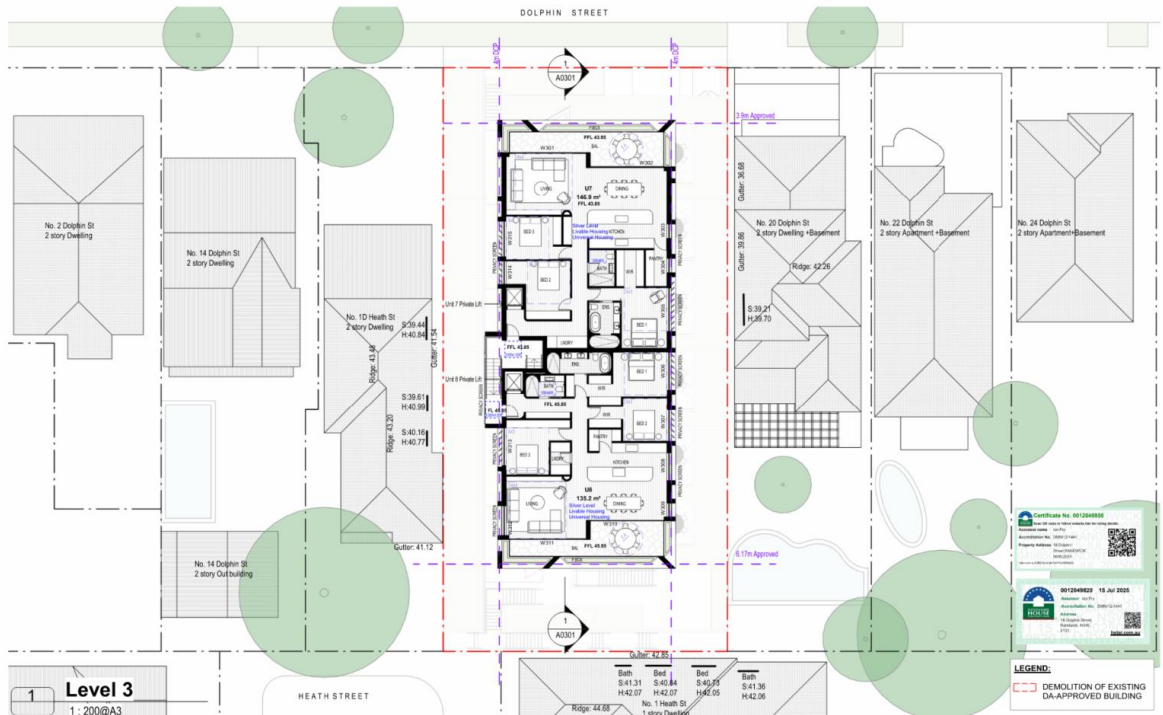
The key changes proposed under the subject application, in comparison to the multi-dwelling housing development approved under DA/371/2019 and DA/371/2019/A, are summarised in the table below:

	Multi dwelling housing approved under DA/371/2019 & DA/371/2019/A	Proposed
Basement	• 11 car parking spaces including 3 provided with car stacker accessed from Dolphin Street to the north. • 4 bicycle parking spaces • Unit and waste storage • Plant room	• 16 car parking spaces including 8 provided with shuffling car stacker accessed from Dolphin Street to the north • 4 bicycle parking spaces and 1 motorcycle parking space • OSD Tank below the driveway

D64/25

	• OSD Tank below the driveway • Individual lift access for each unit. • Common stair to the south.	• Unit and waste storage, pump room and services • Individual lift access for each unit. • Common stairs to the south. <u>Key changes compared to what's approved include:</u> • Relocation of visitor parking space from the rear to the front • New pump room and relocation of FH within the front setback • Reduced front setback from 3.898m to 3.814m • Reduced waste room size • Relocation of services and storage
Ground	• Pedestrian access via steps to podium common pathway along western side boundary accessed from both Dolphin Street and Heath Street. • 6 x multi dwelling housing units comprising ground floor kitchen / living, bathroom and east-facing POS. • Communal open space to the south with BBQ and seating area.	• Pedestrian access via steps to podium common pathway along western side boundary accessed from both Dolphin Street and Heath Street. • 6 x units comprising ground floor kitchen / living / dining area, powder room and east-facing POS, each with ground floor access • Stairs to top floor units 7 & 8 • Communal open space to the south <u>Key changes compared to what's approved include:</u> • Reduced size of unit 4 • Minor reconfigurations to accommodate the new external stairs and lifts to Unit 7 & 8 • Removal of hard paving area in front of Unit 1 within the front setback (consistent with condition 2(e) in DA/371/2019) • Increased podium terrace setback from 900mm to 2m (consistent with condition 2(c) in DA/371/2019) • Removal of highlight window to the kitchen to each unit • Reconfiguration of the rear yard, including removal of an outbuilding, slight relocation of fire stairs and introduction of steps along the rear boundary • BBQ and seating area removed from the communal open space
1 st	• 5 dwellings provided with 2 bedrooms and 2 ensuites. • Southernmost dwelling provided with 1 bedroom with ensuite, family room and bathroom.	• 5 units provided with 2 bedrooms, 1 bathroom and laundry facilities • Unit 4 provided with 1 bedroom with walk-in-robe and ensuite • External stair access to top floor units 7 & 8 only <u>Key changes compared to what's approved include:</u> • Reduced size of unit 4

		• Reconfiguration of each unit to replace the two ensuites with one bathroom • Privacy screen added to windows on the eastern elevation (consistent with condition 2(a) in DA/371/2019) • Replacement of the angled feature element on the east elevation • Removal of the feature blade walls on the rear elevation
2 nd	• 5 dwellings provided with a study. • Southernmost dwelling provided with 1 bedroom. • Every dwelling provided with east-facing terraces with landscaped area.	• 5 units provided with a bedroom with walk-in-robe, study and ensuite • Unit 4 provided with two bedrooms and a bathroom <u>Key changes compared to what's approved include:</u> • Greater floor plane with increased floor area and reduced eastern side setback • Roof terrace deleted • Privacy screen added to windows on the eastern elevation (consistent with condition 2(a) in DA/371/2019) • Removal of the feature blade wall on the rear elevation
3 rd	N/A	• 2 units provided with an open plan living / dining / kitchen with pantry and access to balcony, two bedroom, one bathroom, one bedroom with walk-in-robe and ensuite, and laundry facilities



Architectural section drawing of a proposed building. The drawing shows the building's profile with various levels and heights. Key features include:

- Roof - Lower:** RL 48.430
- Level 3 Lower:** RL 43.850
- Level 2 U1:** RL 39.280
- Level 1 U1:** RL 36.240
- Ground Level U1:** RL 33.200
- Basement:** RL 30.500

Internal room layouts are labeled: RE (Residential), WD (Workshop), MB (Mechanical), PS (Pump Room), SC (Storage), and IMG (Image). The drawing also shows external walls, boundaries, and various height markers (RL 42.26, RL 41.44, RL 39.86, RL 36.68, RL 50.43, RL 48.43, RL 43.48, RL 41.54, RL 39.280, RL 36.240, RL 33.200, RL 30.500). It includes annotations for "17.5m (4 STOREY) FUTURE DEVELOPMENT", "10.5m EXTERNAL WALL HEIGHT BASED ON PRE-CONSTRUCTION E.G.L. TAKEN AT THE FRONT SETBACK LINE", and "E.G.L. BASED ON CONSTRUCTED BASEMENT AT FRONT SETBACK LINE".

This architectural section drawing illustrates the proposed building's internal structure and its relationship to the surrounding environment. The building is shown in cross-section, revealing multiple levels and internal spaces.

Internal Spaces and Features:

- Roof - Upper:** The top level, with an elevation of RL 50.43.
- Level 3 Upper:** The level below the roof, with an elevation of RL 45.850.
- Level 2 U6:** The level below Level 3, with an elevation of RL 42.780.
- Level 1 U6:** The level below Level 2, with an elevation of RL 39.740.
- Ground Level U6:** The ground level, with an elevation of RL 36.700.
- Basement:** The level below ground, with an elevation of RL 30.500.

Key Features and Dimensions:

- Roof - Upper:** Elevation RL 50.43.
- Level 3 Upper:** Elevation RL 45.850.
- Level 2 U6:** Elevation RL 42.780.
- Level 1 U6:** Elevation RL 39.740.
- Ground Level U6:** Elevation RL 36.700.
- Basement:** Elevation RL 30.500.
- Roof - Upper:** Elevation RL 50.43.
- Level 3 Upper:** Elevation RL 45.850.
- Level 2 U6:** Elevation RL 42.780.
- Level 1 U6:** Elevation RL 39.740.
- Ground Level U6:** Elevation RL 36.700.
- Basement:** Elevation RL 30.500.

Key Features and Dimensions:

- Roof - Upper:** Elevation RL 50.43.
- Level 3 Upper:** Elevation RL 45.850.
- Level 2 U6:** Elevation RL 42.780.
- Level 1 U6:** Elevation RL 39.740.
- Ground Level U6:** Elevation RL 36.700.
- Basement:** Elevation RL 30.500.

Figure 11. Proposed North Elevation (Source: Architectit)



Figure 12. Proposed East Elevation (Source: Architectit)



Figure 13. Proposed West Elevation (Source: Architectit)



Figure 14. Proposed photomontages (*Source: Architectit*)

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. Twenty-six (26) submissions were received as a result of the notification process from (including but not limited to) the following properties:

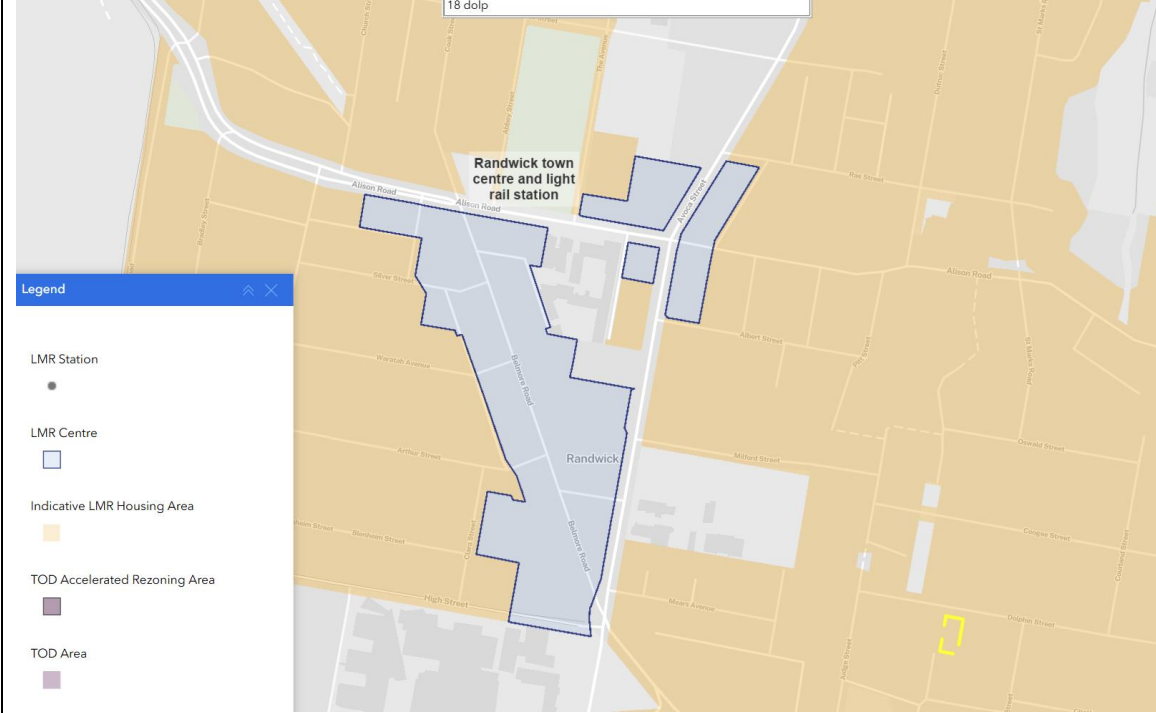
- 3 Dolphin Street
- 5 Dolphin Street
- 7 Dolphin Street
- 9 Dolphin Street
- 14 Dolphin Street
- 15 Dolphin Street
- 20 Dolphin Street
- 1/26 Dolphin Street
- 2/26 Dolphin Street
- 1 Heath Street
- 1D Heath Street
- 2 Heath Street
- 3 Heath Street
- 5 Heath Street
- 7 Heath Street

In addition to submissions received from the above properties, it is also noted that some submissions did not include their addresses and that an anonymous submission was received.

Further to the submissions received from residents, it is noted that a submission was also received from the architect who authored the original approved design under DA/371/2019 and DA/371/2019/A. The submission raised claims of copyright infringement, which are matters outside Council's legislative authority to intervene. Concerns regarding potential unauthorised works have been referred to Council's Compliance Team for investigation. Other matters raised, including overdevelopment, overshadowing, non-compliance with building setbacks, and parking, are addressed in the following table.

Concerns raised in the submissions have been summarized below:

Issue	Comment
Excessive bulk and scale / out of character with the existing development on Heath Street and Dolphin Street and neighborhood and significant visual impact	This matter is agreed with. Refer to discussion in 'Key Issues' section of this report.
Eligibility of relying on the LMR provisions in Housing SEPP	The subject site is located within 800m of Randwick Town Centre and Light Rail Station and is mapped within Low and Mid-Rise Housing area on the Low and Mid-Rise Housing Policy Indicative Map (Figure 9). Whilst Council acknowledges that the site is within the outer LMR area (as per Chapter 6 of Housing SEPP), Council agrees that the proposed development has a built form that has significant adverse impact on the streetscape and characters of the area and cannot be supported.

Issue	Comment
	
Figure 15. Subject site (highlighted in yellow) within Indicative LMR Housing Area in Low and Mid-Rise Housing Policy Indicative Map (Source: DPIE NSW) Non-compliance with the principles of Chapter 2 Affordable Housing in Housing SEPP - The two 'penthouse' apartments each consists of three bedrooms and two bathrooms with excessive floor area and each serviced by a private lift, which is clearly not 'affordable' to very low to moderate income households. The proposal does not satisfy the intent and principles of the Housing SEPP. - It is highly unlikely that a household which can afford a \$2-3.5 million plus apartment with ocean views and ample off-street carparking will trudge 10 minutes up the hill to Randwick to take a 35-min light rail or bus trip to work in the CBD, thus not making good use of 'existing and planned infrastructure'. The planned development would have proposed an alternative housing mix and parking arrangements.	The proposal does not rely on the affordable housing provisions and Chapter 2 of the Housing SEPP does not form part of this DA assessment.
Non-compliance with ADG - 1 Context and neighbourhood character - 2 Built form and scale - 9 Aesthetics	This matter is agreed with. Refer to comments from DEAP and assessment against ADG attached in Appendix 1 and 4 of this report.

D64/25

Issue	Comment
Non-compliant building height, even with the bonus height allowed under Chapter 6 Low and Mid Rise Housing in Housing SEPP - Non-compliance with the bonus building height has a significant impact on the bulk and scale, and incompatible with the residential developments in the locality, amenity impacts and quality of life of the existing community - The applicant has not demonstrated that 'compliance with the development standards is unreasonable or unnecessary in the circumstances'.	This matter is agreed with. Refer to detailed assessment in Clause 4.6 section of this report.
Non-compliant external wall height	This matter is agreed with. Refer to discussion in DCP attached in Appendix 5 of this report.
Non-compliant FSR	The maximum FSR allowed under LEP is 0.75:1 and the Housing SEPP allows a maximum FSR of 1.5:1. The proposal has a FSR of 1.31:1 or a GFA of 1,087.1sqm, which complies with the maximum FSR allowed under the Housing SEPP.
Building setbacks - Lack of building setbacks provided to the top floor apartments - Non-compliance with the 4m side setback requirements	This matter is agreed with. Refer to discussion in 'Key Issues' section of this report.
Unjustified intensity of the site purely for developer benefit rather than community needs	Whilst the subject site is located within the the outer LMR area (as per Chapter 6 of Housing SEPP) where the development of low and mid rise housing is encouraged, Council agrees that the subject site is not suitable for further intensification in the proposed form. Refer to discussion in 'Key Issues' section of this report.

Issue	Comment
Heritage conservation - Adverse impact on the heritage sandstone retaining wall - Impact on the conservation significance The northern section of Dolphin Street was previously identified for potential 'special conservation' area due to significant level changes, and a distinctive built form comprising federation and inter-war bungalows, substantial trees, landscaped slopes, and a dominant sandstone retaining wall. The proposal disregards this context entirely. The scale and massing are incompatible with the precinct and completely undermine the visual cohesion of the streetscape.	The application has been reviewed by Council's Heritage Planner, who advised that the proposal would not impact the existing heritage retaining wall. It is noted that the proposed 'special conservation' area was not adopted by Council and the site is not identified as being within a Heritage Conservation Area under the Randwick LEP 2012. Nevertheless, it is agreed that the proposed development does not appropriately respond to the prevailing character of the surrounding development and would detract from the existing streetscape character.
Overdevelopment / Suitability of the site A fourth level would differ from most recent developments in the area, which are limited to three levels and better situated on wider streets like Carrington Road and Coogee Bay Road with more appropriate access. In contrast, 18 Dolphin Street is bordered by a cul-de-sac (Heath Street) at the rear with limited all day parking and Dolphin Street which splits into two levels including a lower non-trafficable northern side with no parking, and an upper southern side with parking and two-way traffic via a single lane.	This matter is agreed with. Refer to discussion in 'Key Issues' section of this report.
Non-compliant landscaping ratio, calculation of the open landscaped area	The proposed development complies with Section 177 Landscaping—residential flat buildings or shop top housing in the Housing SEPP, and Section 2.2.1 Landscaped open space in Part C2 of RDCP 2013. Refer to relevant sections of this report for further details.
'Deep soil' areas between 2 walls (vertical excavations at the rear) will not grow and will not get any light	The application was referred to Council's Landscape Officer for review who did not object to the application subject to conditions of consent.

D64/25

Issue	Comment
Waste management The street is very narrow, steep and effectively single lane road. The current footpath is not able to cope any more bins / ten-twelve 240L bins for bin collection. It will substantially block the footpath, obstruct traffic flow, and create additional safety hazards, especially during school drop-off and pick-up times.	Whilst it is acknowledged that Dolphin Street is a narrow road with limited parking availability and pedestrian path, it is noted that a total of nine (9) bins were previously approved under DA/371/2019 and DA/371/2019/A for kerbside collection on Dolphin Street. The current proposal includes ten (10) bins in total, comprising four (4) waste, four (4) recycling and two (2) green waste bins, which is consistent with the waste bin requirements for residential flat buildings under Appendix 3 of Part B6 of Council's DCP. This represents an increase of one (1) bin compared to the previously approved development. Waste collection will continue to occur from the kerbside along Dolphin Street, where sufficient space is available to accommodate the required bins. The basement level is located in proximity to the street, and the proposed pedestrian access is designed to comply with relevant accessibility standards. The application was referred to Council's Development Engineer, who raised no objection to the proposed operational waste management arrangements.
Setting a concerning precedent for future developments	This matter is agreed with. Refer to discussion in 'Key Issues' section of this report.
Overshadowing impact - Shadow diagrams not including Dolphin Street - Overshadowing impacts on adjoining properties, including but not limited to 1, 1D, 3 and 5 Heath Street, 20, 22, 24 and 26 Dolphin Street - Overshadowing impacts on the lower levels of the subject site - Neighbouring buildings will not receive adequate daylight from the towering development.	Neither the ADG nor Council's DCP identifies overshadowing of streets as a relevant consideration. Solar access controls relate specifically to the living areas of residential dwellings and their associated private open spaces, rather than the public domain. The overshadowing impacts on adjoining properties are mostly agreed with and a detailed assessment has been carried out in 'Key Issues' section of this report. Properties at 24 and 26 Dolphin Street are unlikely to be adversely impacted given their separation and location further away from the subject site. Daylight impacts are not a direct planning consideration in a DA, however, can be attributed to the massing of the development, of which Council does not support.
Loss of privacy - Direct sightlines into the POS and living areas of properties located around - Increased noise generated from the intensified use	This matter is agreed with. Refer to discussion in 'Key Issues' section of this report.

Issue	Comment
View loss - Loss of sky views and open aspect from windows and backyard	Whilst there is no view of significant value obtained from the subject site or adjoining properties such as city skyline views or water views, it is acknowledged that the proposal would obliterate views of sky and open aspect from the windows of adjoining dwellings from both sitting and standing positions and the back yard. Loss of sky views is not a direct planning consideration in a DA, however, can be attributed to the excessive height and massing of the development and the adverse visual impact, of which Council does not support.
Parking and traffic - 1.5 spaces per 3 bedroom is already very low compared to real world needs and this minimum requirement is only met using a car shuffler. - Feasibility of the proposed car stackers, including the operation, size and weight of the vehicles that can be accommodated, power consumption, and maneuvering - Residents will just take street parks and only use car shuffler as last resort - Further capacity constraints on existing shortage of street parking noting that properties located on the northern side of Dolphin Street do not have off-street parking facilities due to the topography and only 6 all-day parking spaces on Heath Street, which are in high demand from local workers and visitors to nearby colleges and hospital. - This section of Dolphin Street is the nominated school drop-off and pick-up route for Claremont College, which causes gridlock each morning and afternoon.	Parking rate (DCP) • 1.5 spaces per 3 or more bedroom apartments • 1 visitor space per 4 units (but none where development is less than 4 dwellings) Parking spaces required = $1.5 \times 8 + 8/4 = 14$ Parking spaces proposed = 16 spaces including 8 spaces provided in way of shuffling car stacker. The proposal provides 16 off-street parking spaces, which is 2 spaces in excess of the minimum requirements. Whilst the assessing officer acknowledges that the subject area and streets are constraint, sufficient parking spaces have been provided on the site. The application was referred to Council's Development Engineer, who raised no objection to the proposed shuffling car stacker as the width of the spaces and adjacent parking aisle will still achieve compliance with AS 2890.1. See Development Engineering comments in Appendix 1 for a detailed consideration of parking and traffic issues.
Structural integrity - Concerns arise from the larger new storey	Were the application to be approved, conditions would be included in the Notice of Determination to ensure that the structural integrity of the existing and proposed structures is maintained before, during, and after the carrying out of any building works.

D64/25

Issue	Comment
Issues contained within the Statement of Environmental Effects - Section 4.5.3 Wall heights and roof Contradictory statements regarding flat roof and pitched roof - Section 5.3.1 View sharing SEE Considered the adjoining properties directly to the east and west only, and did not consider other properties within close proximity - Section 5.3.2 Solar Access The additional overshadowing on Heath Street at the rear, which is a small cul-de-sac for social gatherings and parking for residents was not considered. - Section 5.5.1 Social and Economic Impact False statement <i>'in terms of bulk and scale, the development is consistent with other developments in the area...'</i> - Section 5.5.2 The Public Interest False statement <i>'The proposal has been designed with careful consideration of the adjoining residents' amenity and the streetscape character.'</i> - SEPP Conclusion <i>"Adding an additional 4th floor will exceed the 17.5m height allowance by a significant 22%, even when using the new ground level, which is the very lowest point of the excavation, being an excavated pit under the car stackers in the basement. Being a pit specifically for the car stackers, this should not be considered a new ground level. If the measurement was taken from the basement floor level, it would exceed the permissible level by a further 1.5-2 meters, highlighting the overall excessiveness of the development height."</i>	Noted and mostly agreed with. Refer to the relevant sections of this report for discussion of the issues respectively.
Issues contained within the CI4.6 Variation Request - CI 4 - The assessment did not consider the existing ground level on the northern side of Dolphin Street - CI 5 - The examples of the 4 storey and higher buildings are at least a block away from the subject site - CI6.1 – Test 1 fails to consider the impacts on the residents on the northern side of Dolphin Street, the examples used are located towards the west towards Coogee Road or other much different streets rather than the local context, and the visual bulk and lack of building setbacks	This matter is agreed with. Refer to detailed assessment in Clause 4.6 section of this report.

Issue	Comment
Failure to incorporate prior conditions - The mediation outcomes from DA/371/2019/A imposed specific controls on setbacks, landscaping, and acoustic treatment. An additional storey and units would make these redundant and disregard previously agreed Council requirements. - All amendments in 15833.21 Bindon AC Annexure that was approved in DA/371/2019/A need to be carried forward in the subject DA.	The subject application seeks to amend Development Consents DA/371/2019 and DA/371/2019/A. Were the application to be approved, conditions would be included in the Notice of Determination to ensure that all relevant requirements under DA/371/2019 and DA/371/2019/A are retained, inclusive of the amendments proposed under this application. Where previously imposed conditions can no longer be practically satisfied due to the modified building form, new conditions would be applied to ensure that appropriate measures are in place to maintain the amenity of adjoining properties.
Incremental development - <i>Approving add-ons encourages developers to 'start small' and sneak in extra floors once approval is locked in</i> undermines the consistency, fairness, and integrity of planning system	It is noted that DA/371/2019 was approved on 14 May 2020 and DA/371/2019/A was approved on 27 May 2021. The LMR provisions that allow for greater densities under Chapter 6 "Low and mid rise housing" of the Housing SEPP came into force on 26 February 2025.
Adverse impact on vulnerable neighbour at 1D Heath Street who is elderly and has chosen to vacate his home due to the disturbance of the construction under the current approval. The significant adverse impact including visual bulk, overshadowing, and loss of privacy would negatively affect their quality of life and the property value and must be considered.	A submission has been received from 1D Heath Street within the notification period. The concerns raised have been reviewed, summarized in this table, and considered in the assessment process.
Construction Activities and Impacts - Development construction has already generated noise, dust and traffic congestion. Amendments will extend construction time and impact quality of life. - Illegally parked unregistered vehicles in front of the site to provide entry to construction trucks - Extended construction timeframe of the building approved previously from 1 year to 4 years.	Were the application to be approved, standard construction-related conditions would be included in the Notice of Determination. However, compliance matters are not a relevant consideration in the assessment of the subject application.
Drainage pollution Existing drainage issues with substandard stormwater management with copious amounts of polluted runoff occurring on rainy days	Noted, however these matters are not a direct planning consideration in this DA. The application was referred to Council's Development Engineer, who raised no objection to the proposed drainage system subject to conditions of consent. Were the application to be approved, relevant conditions regarding stormwater system would be imposed in the Notice of Determination.

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

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 substantial redevelopment of an existing building.

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

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

Design Review Panel

The Design Excellence Advisory Panel functions as design review panel for the purposes of SEPP 65.

The DA was referred to the Design Excellence Advisory Panel for advice concerning the design quality of the development. The panel advised that this hybrid strategy to integrate the previously approved townhouses with newly introduced apartment-style dwellings is fundamentally flawed, generating substantial urban design, architectural and buildability concerns.

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

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

Design Quality Principles

A Design Verification Statement, prepared by Architectit and dated 17 July 2025, and an assessment against Housing SEPP and Parts 3 and 4 of the ADG, also prepared by Architectit were submitted with the application. The statement outlines how each of the nine design quality principles has been addressed in the proposal.

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

Apartment Design Guide

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

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: The proposal provides sixteen (16) car spaces in the basement level, including eight (8) spaces accommodated in shuffling car stacker, which complies with the minimum amount of car parking required.

- (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: Each proposed apartment provides an internal area greater than the minimum internal area required.

- (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: The proposed ceiling heights for the building are greater than the minimum ceiling heights required.

Chapter 6 – Low and Mid Rise (LMR) Housing

Chapter 6 of the Housing SEPP seeks to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.

The subject application seeks to use the LMR housing provisions under Part 4 'Residential flat buildings and shop top housing' of Chapter 6 of the Housing SEPP as the subject site is located within 800m of Randwick Town Centre and Light Rail Station.

See Appendix 3 for a detailed assessment against each relevant clause of the LMR housing provisions of the Housing SEPP. In addition, consideration of the building envelope is considered under Chapter 4 of the Housing SEPP above.

6.2. SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted in accordance with the requirements of the Sustainable Buildings SEPP 2022.

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development does not involve removal of any trees. The application has been reviewed by Council's Landscape Officer, who support the application subject to conditions. Were the application to be approved, relevant landscaping-related conditions would be imposed. Refer to detailed assessment by Council's Landscape Officer at Referrals section in Appendix 1.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

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

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned Residential R3 Medium Density under Randwick Local Environmental Plan 2012 and the proposal of 'residential flat building' is permissible with consent. Objectives of R3 zone include:

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

The proposal is inconsistent with the fourth, fifth, and sixth objectives of the zone in the following ways:

- The proposed development application does not recognise the desirable elements of the existing streetscape and built form in seeking an additional storey to the approved 3-storey building or proposing an additional storey as a direct extrusion of the approved storeys below. The Applicant has not demonstrated that the precinct is undergoing transition by failing to demonstrate the viability and feasibility for greater densities resultant from the "low and mid rise housing" provisions of the Housing SEPP.
- The proposed development application does not protect the amenity of residents in failing to provide adequate solar access, visual amenity and privacy for the neighbouring residents.
- The proposed development application does not encourage housing affordability as the proposal seeks to provide oversized dwellings that lack a diversity in unit types and configurations, which fails to encourage housing affordability within the locality.

In this regard, the proposed development is recommended for refusal.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3: Building height (max)	9.5m <u>Housing SEPP</u> <u>(LMR Outer Area)</u> =17.5m	Proposed = 21.41m	No – Cl4.6 submitted
Cl 4.4: Floor space ratio (max)	0.75:1 / 620.85sqm <u>Housing SEPP</u> <u>(LMR Outer Area)</u> = 1.5:1 / 1,241.7sqm	Site area = 827.8sqm (area of access handle excluded) FSR = 1.31:1 / 1,087.1sqm	Yes

6.5.1. Clause 4.6 - Exceptions to development standards

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

6.5.2. Clause 5.10 - Heritage conservation

A Local Heritage Item is located to the north of the site as part of the Dolphin Street road reserve, identified as item L353 “Dolphin Street sandstone retaining wall and embankment”.

The existing heritage retaining wall is situated below street level on the northern side of Dolphin Street and is largely obscured by existing vegetation. The proposed development will not have any adverse impact on the heritage significance or visual appreciation of this item.

The application has been reviewed by Council’s Heritage Planner, who did not object to the application.



Photograph 1: The position of the heritage item in relation to the subject site, as viewed from the site looking northwest



Photograph 2: The position of the item in relation to Dolphin Street, as viewed from Dolphin Street looking west

Figure 16. Photographs showing that the sandstone wall is below the street level and concealed behind vegetation (*Source: GSA Planning*)

6.5.3. Clause 6.2 – Earthworks

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

The proposed amendment introduces additional excavation to accommodate shuffling car stackers. The approved basement floor level is RL 30.50. Whilst the proposed development did not specify the new RL for the basement or the lowest excavation level, based on the assessing officer’s measurements, the proposal would excavate to approximately RL 29.019, representing an additional excavation depth of approximately 1.48 m beneath the approved basement level.

A geotechnical report prepared by KFM Geotech Pty Ltd and dated 22 July 2024 was submitted; that investigation was undertaken during bulk excavation works for the approved six-unit multi housing development under DA/371/2019/A and assessed foundation bearing capacity at the excavation level at that time. The applicant also submitted a letter from Smart Structures (7 July 2025) seeking to rely on the earlier geotechnical investigation. On review, the Smart Structures letter contains material inaccuracies and omissions that undermine reliance on its conclusions, which have been outlined below:

- The letter incorrectly states that the current proposal does not involve excavation beyond what was assessed in the initial investigation. The proposal would excavate to approximately RL 29.019, which is deeper than the previously approved excavation level.
- The letter also refers to “additional two levels” without reference to any architectural documentation. The submitted architectural plans indicate only one additional level above the previously approved three storeys. In the absence of corresponding architectural information, the building massing and overall form cannot be accurately verified, rendering the conclusions in the letter uncertain and potentially unsound.

- Given these inconsistencies, the Smart Structures letter's conclusions—that no new geotechnical investigation is required, no new subsurface conditions are expected, and the original findings remain appropriate—are not supported by the available evidence.

In addition, the KFM report records water seepage on the southern cut face at levels approximately 1.0 m and 2.5 m above the ground floor slab, which indicates perched groundwater or seepage issues at the cut face. This observation raises two further concerns:

- potential geotechnical and structural implications for deeper excavation and basement construction (including temporary works and long-term drainage), and
- whether relevant regulatory approval relating to groundwater interception (i.e. potential 'integrated development') is required.

Accordingly, the application has not demonstrated that the existing geotechnical information is adequate for the proposed works. The proposed development does not satisfy clause 6.2 and is recommended for refusal.



Figure 17. Long Section approved under DA/371/2019 (Source: EK Design Studio)



Figure 18. Long Section submitted for DA/371/2019/A (Source: EK Design Studio)

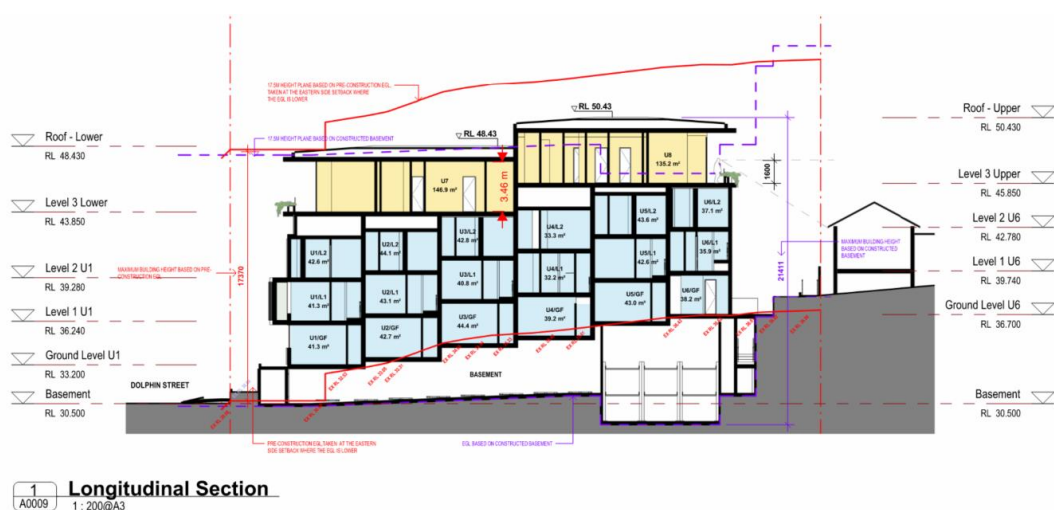


Figure 19. Long Section proposed in the subject DA (Source: Architectit)

6.5.4. Clause 6.4 – Stormwater management

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

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

6.5.5. Clause 6.10 – Essential services

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

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

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

6.5.6. Clause 6.11 – Design excellence

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

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

- The proposed development comprises only three-bedroom units and does not provide an appropriate mix of apartment types as required by the ADG.
- The proposed dwellings substantially exceed the minimum internal floor area requirements, with Unit 7 having an area of approximately 147sqm and Unit 8 approximately 135sqm. The excessive size of these units contributes to the overall bulk, scale, and massing of the

development, resulting in adverse impacts on the established character of the locality and the amenity of adjoining properties.

- c) The top-floor apartments are poorly integrated with the primary street frontage and rely on convoluted access arrangements, including private lifts accessible only from the basement level or stair access via a long, stepped walkway from the street. This design results in poor legibility and limited accessibility, contrary to the intent of the ADG principles for building entry and circulation.
- d) The approved multi dwelling housing development was designed to respond sensitively to the site's topography through a stepped building form. In contrast, the proposed additional level is placed above the stepped roof without regard to the existing context or site topography, resulting in "void" spaces between the approved townhouses and the new upper level. This outcome highlights a lack of integration and demonstrates poor spatial and architectural resolution in the design.

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

- a) The existing character of the locality is predominantly defined by two-storey dwelling houses and three-storey residential flat buildings with ground floor garages. The proposed four-storey development with a basement level, is inconsistent with this established 2–3 storey scale. Its overall height and bulk result in a visually dominant built form that detracts from the prevailing streetscape and desired future characters of the area.
- b) The proposal introduces an additional cantilevered storey above the approved three-storey building, resulting in altered proportions and scale that are inconsistent with the existing streetscape character. The increased intensity, height, and bulk of the development fundamentally change the architectural character and built form, necessitating a comprehensive redesign to achieve a purpose-designed residential flat building that aligns with the intent and requirements of the Apartment Design Guide (ADG).
- c) Pursuant to section 4.1(iii) in Part C2 of RDCP, the proposal does not adequately articulate facades to reflect the function of the building, present a human scale, or contribute to the proportions and visual character of the street. The new upper level, which cantilevers above the lower townhouse forms, has no coherent relationship with the levels below and results in a visually unbalanced composition that is inconsistent with the established streetscape along Dolphin Street.
- d) The extended blank walls on the lower levels of the south elevation, combined with the cantilevered elements on the new upper level, result in a visually bulky and unarticulated façade that presents a poor outlook and detracts from the established streetscape character along Heath Street.

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

- a) The Applicant has failed to provide contextual analysis or urban design justification for the extruded built form or street wall scale.
- b) The Applicant has failed to provide contextual analysis or urban design justification to assess the potential impacts of the proposed height exceedance within the character of the locality.
- c) The proposed overhanging elements on all elevations protrude against the approved development, creating significant adverse visual impact, and associated overshadowing and visual privacy impacts.
- d) The proposed fire staircase protrudes beyond the western building envelope for the full height, which fails to be well integrated into the overall architectural design, exacerbating the inadequate building setback, exacerbating the visual dominance of the overall built form and creating adverse visual privacy issues.
- e) The proposed development will visually dominate the other adjoining sites and buildings, which is not responsive to the existing or desired character of future form.

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

- a) The proposed development fails to provide adequate solar access to the living rooms and private open space of adjoining properties, which significantly impact on their amenity.

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

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard contained within the State Environmental Planning Policy (Housing) 2021:

Housing SEPP (2021) – LMR Outer Area	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Clause 180(3)(b) Maximum Building Height	Maximum = 17.5m	Proposed = 21.41m	3.91m	22%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Building Height development standard (Clause 180(3)(b))

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

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

The applicant's written request seeks to justify the contravention of the Building Height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the objectives of Cl4.3 Height of Building development standard in RLEP are still achieved (noting that there are no objectives relating specifically to the maximum building height standards in the Housing SEPP).

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

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

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

“The R3 Medium Density Residential zoning envisages residential flat buildings which is proposed on the site. The subject site is located within an area of evolving character, featuring contemporary multi storey residential flat buildings above at grade level garages, similar to that proposed. The 17.5m height limit under the Housing SEPP envisages a built form of up to four storeys above a basement level, which is consistent with other built forms in the vicinity, including several multi storey residential flat buildings (see Figure 3 on page 7).

The proposed built form is consistent with approvals in the LGA, which collectively form the emerging and desired future character of the area. There are a number of examples of R3 zoned medium density developments, which have been approved under the current controls with varying degrees of height non-compliances.

...

The proposed maximum height occurs at the rear due to a drop in the existing ground level resulting from excavation for the approved car stacker. The proposal retains the car stacker arrangement relative to the existing ground line as approved. The variation is due to previous excavation, which resulted in a lowered existing ground line. When considering the pre-construction existing ground level, the development sits below the permissible height, indicating the variation is technical in nature.

As the proposed four storey residential flat building above a basement level is consistent with the desired medium density residential character envisaged under the LMR provisions and with other approved developments in the vicinity, it can be considered consistent with the desired future character in accordance with Objective (a).”

- (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 the following:

“The site does not include any contributory item, is not located within a Heritage Conservation Area, and does not adjoin any heritage item. However, a local Heritage Item (Item L353), relating to a sandstone retaining wall and embankment, is located on the northern side of Dolphin Street, opposite the site. As this item is below the street level and concealed behind vegetation, the variation is unlikely to affect its heritage significance (see Photographs 1 and 2).”

- (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 the following:

“Visual Bulk

The proposal provides a bulk and scale consistent with the permissible standard and other multi storey developments in the area.

...

In fact, when viewed from Dolphin Street, the variation is unlikely to be visible due to its relatively minor extent, the elevated built form due to the steep topography, and the narrow street width, as discussed elsewhere in this report. When viewed from Heath Street at the rear, Unit 8 is set further back from the rear boundary than the approved levels below, minimising its visual impact. Also, the balcony has peripheral planters that soften the built form's appearance.

The portion of Unit 8 that exceeds the standard utilises quality materials and finishes, adds articulation to the rear façade, and integrates well with the approved scheme...

Privacy

The non-compliance relates to a minor portion of the roof at the front that does not include any openings or areas of private open space, indicating no privacy impact...

Views

Given the site's location, there do not appear to be any significant views available across the site; and the DCP also does not identify any notable views or vistas that may be affected by the proposed new level.

... Specifically, the site is located in an area with a steep topography, featuring a fall of approximately 9.6m from Heath Street to Dolphin Street. This indicates that neighbouring properties to the south are situated at a higher level than the subject site, and as such, any potential views from these properties are unlikely to be affected...

Similarly, due to the steep topography, properties to the north are positioned below street level, indicating that the variation will not impact views for buildings opposite Dolphin Street...

With respect to neighbouring developments to the sides, side facing windows are typically screened by dense vegetation, which limits views. In addition, due to the slope of the area descending to the east, properties to the west are less likely to be affected. To the east, existing dwellings are generally located at the front portion of their respective sites, with side windows oriented towards adjacent built forms rather than the broader surrounding greenery. Moreover, the neighbouring properties to the sides are low rise buildings, indicating their potential views are already constrained and the variation will not result in any greater impact compared to the approved development. Accordingly, the proposed non-compliance is considered appropriate in terms of view sharing.

Solar Access

These diagrams indicate that the variation will not cast additional shadow to the landscaped areas of the neighbouring. The elevational shadow diagrams indicate that any additional shadow to neighbouring living room windows is limited to a negligible portion of a first floor window at No. 1 Heath Street at 11:00 am only. Importantly, this window will continue to receive more than three hours of sunlight, as recommended under the DCP (see Figures 4 and 5 on the following pages).

Importantly, the greatest area of non-compliance occurs at the rear and as indicated, is technical in nature. This demonstrates that the impact of the proposed technical breach is equivalent to the impact of a built form assessed against the pre-construction existing ground level, which would result in a compliant envelope. Accordingly, the proposed technical variation is considered appropriate in terms of solar access."

Assessing officer's comment:

The Applicant's written request has not adequately demonstrated that compliance with the Building Height development standard is unreasonable or unnecessary in the circumstances of the case. The reasons in forming this opinion are as follows:

- The Applicant seeks to rely on the Low and Medium Rise Housing (LMR) provisions of the Housing SEPP to justify the proposed intensification of the site. However, no context analysis or feasibility assessment has been submitted to demonstrate that the maximum development potential theoretically available under the Housing SEPP could be viably or appropriately achieved on the subject site, having regard to its topographical, access, and spatial constraints.
- The development does not exhibit design excellence, is inconsistent with the local character and ADG design guidelines, and has a form that will adversely impact upon the amenity of residents, both of the subject building and neighbouring buildings.
- While the Applicant seeks to justify the alleged 'unreasonable and unnecessary' nature of the standard using Test 1, contending that the proposal meets the objectives of the Building Height control in the RLEP, the submission fails to demonstrate that the proposed development is consistent with the principles of the Housing SEPP.
- The top-floor apartments have a ceiling height of 3.5 m, which exceeds the minimum requirement of 2.7 m. This contributes directly to the proposal exceeding the maximum

building height limit. The applicant has not provided sufficient justification for the over-generous ceiling heights, nor demonstrated that such heights are necessary.

- The proposed variation to the building height arises from a lack of sensitive architectural consideration and poor integration with the approved built form. This is clearly demonstrated by the unresolved void spaces created between the approved townhouses and the proposed upper level, which indicate a lack of cohesion and architectural refinement.
- Figure 3 in the written request references examples of four-storey and higher buildings within the “*surrounding context*”; however, none of these examples are located within the subject urban block as the subject site on Dolphin Street or Heath Street. In fact, the referenced examples are located to the south of the subject site, along or near Coogee Bay Road, where the streetscape character and surrounding context differ significantly from that of the subject site. In this regard, none of these examples establish a relevant precedent within the immediate locality.
- Examples of R3-zoned medium density developments with height variations were referenced to justify the “*emerging and desired future character of the area*.” However, the cited examples are located in Coogee and Malabar, which are not within Randwick, and certainly not within the same street or urban block as the subject site. As such, these developments do not form part of, nor define, the emerging character of the subject locality.
- The Applicant argues that “*The subject site is located within an area of evolving character, featuring contemporary multi-storey residential flat buildings above at-grade garages, similar to that proposed*.” However, in assessing view sharing impacts, the same written request acknowledges that “*neighbouring sites comprise low-rise one and two-storey buildings*.” This discrepancy indicates that the written request is not substantiated. Further, the Applicant has failed to provide evidence demonstrating that the area is undergoing any meaningful transition toward higher-density, multi-storey development.
- The variation request asserts that “*when viewed from Dolphin Street, the variation is unlikely to be visible due to its relatively minor extent, the elevated built form resulting from the steep topography, and the narrow street width*.” While the topographical constraints and narrow street width of Dolphin Street are acknowledged, the variation will nevertheless be clearly visible, with the proposed built form projecting over the lower levels on all elevations. The resultant bulk and scale are excessive and cannot be reasonably disregarded when the development is viewed from the public domain.
- The variation request asserts that “*Notably, the balcony of Unit 8 provides a set back from the edges, which further contributes to privacy*.” Without appropriate mitigating measures, the balcony of the proposed Unit 8 has the potential to overlook into adjoining properties’ rear yards. While this can potentially be resolved via installation of privacy screens, the impact arise from the excessive massing of the new floor, which exacerbates the adverse impact and is not acceptable.
- Whilst it is acknowledged that the subject site and surrounding properties do not enjoy any views of significance, the proposal would obliterate views of sky and open aspect from the windows of adjoining dwellings from both sitting and standing positions and the back yard. This can be attributed to the excessive massing of the development including the non-compliant building height and the cantilevering elements on all elevations, of which Council does not support.
- The applicant has failed to provide sufficient information to enable a complete and robust assessment on solar access. Nevertheless, the submitted diagrams have identified additional overshadowing impacts arise from the proposed new level, which adversely impact on the amenity of adjoining properties.

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

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

- *Technical Variation due to Previous Excavation*
 “As construction on site has commenced, the existing ground level has been altered to accommodate the approved basement. The proposal will predominantly retain the approved scheme and includes a new floor level (Level 3), portions of which exceed the standard. However, when considering the pre-construction existing ground line, the

proposed four storey residential flat building above a basement level remains entirely below the permissible height limit, indicating the variation is technical in nature.”

- **Contextual Consistency**
“...the area is expected to comprise developments of up to four storeys in height. These developments, along with other built forms currently under construction, will shape the character of locality.”
- **Economic and Orderly Development**
“Strict enforcement of the standard would require a reduction in the floor to ceiling height of Unit 7, which would compromise internal amenity and the overall design quality of the development, and would result in the removal of Unit 8. This scenario does not represent an orderly or economic use of valuable urban land, given the intent of the LMR provisions for sites located in close proximity to a Centre. Accordingly, the proposed variation will result in a better outcome for and from the development, in accordance with Object 1.3(c) of the EPA Act.”
- **Environmental Amenity**
*“Our assessment under Test 1 has demonstrated that, notwithstanding the variation, the proposal will reasonably maintain neighbours’ privacy, solar access, and views. The areas of non-compliance are well integrated within the overall envelope, demonstrating that the variation relates well to surrounding development and does not create environmental impacts.
 Accordingly, in our opinion, the non-compliance will achieve the objectives of the zone and is in keeping with the emerging and desired future character of the area.”*

Assessing officer’s comment: The Applicant’s written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The assessing officers’ reasons in forming this opinion are as follows:

- The applicant has failed to demonstrate that the area is in transition and that the proposal is compatible with the desired future character of the locality.
- The development application does not result in a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height than what is envisioned in the area that is already built up with strata-subdivided residential flat buildings.
- The proposed built form represents a poor design outcome that exacerbates the approved building’s bulk and scale. Rather than maintaining or recessing the new levels to achieve a more balanced built form, the proposal reduces building setbacks on the upper levels, resulting in increased visual dominance and massing. This approach disregards the established and likely future built form alignments within the streetscape and fails to provide an appropriate transition in height and scale.
- The development application will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, and overshadowing.
- Overall, the design does not exhibit design excellence, as per the comments of the Design Excellence panel.
- The proposal does not meet the objectives of the R3 Zone or Section 1.3 of the EP&A Act.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 180(3)(b) have not been satisfied, and that development consent must not be granted for development that contravenes the Building Height development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 5 and the discussion in key issues below.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is inconsistent with the prevailing residential character in the locality. The proposal will result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is not considered suitable for the proposed development. Refer to discussion in Key Issues section below.
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 does not promote the objectives of the zone and will result in significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

9.1.1. Suitability of the site

The topography and layout of Dolphin Street at this location present significant physical and contextual constraints that limit the development potential of the site. Dolphin Street is a narrow two-way road that effectively functions as a single-lane carriageway, where only one vehicle can pass at a time. The street provides limited on-street parking, contains a footpath on only one side,

and exhibits a steep cross fall and split-level topography. Properties along the northern side of Dolphin Street are positioned substantially below the street level, unable to provide off-street parking due to the steep terrain and access limitations. Further, Dolphin Street exhibits a significant fall across the subject urban block, dropping approximately 14 metres from Judge Street in the west to St Luke Street in the east.

Collectively, these characteristics result in a constrained streetscape and reduced accessibility, making the site unsuitable for further intensification or for development of a scale and density beyond that which has already been approved.

The objectives of the R3 Medium Density Residential zone—to provide for housing diversity and increase density in appropriate locations—have already been achieved through the existing approval, which allows for six (6) three-bedroom townhouses across three levels. This development has effectively transformed the former single dwelling into a medium density form containing 18 bedrooms, thereby maximising the use of the site in a contextually appropriate manner.

The current proposal, which seeks to introduce a fourth storey and breach the maximum building height permissible under the LMR provisions of Housing SEPP, does not respond to the physical constraints of the site and is inconsistent with the character of the locality.

Such intensification may be considered in other areas of the LGA mapped within the LMR outer area where sites benefit from wider street verges, footpaths on both sides of the street, greater on-street parking availability, and a more uniform and level topography. However, at this location, the steep terrain, narrow carriageway, and sensitive interface with lower-lying properties render the site unsuitable for a development of this height, scale and intensity.

9.1.2. Desired Future Character and setting an unpleasant precedent within the locality

Objectives in the relevant clauses of the RLEP 2012 provide clear guidance on the consideration of *desired future character*. The fourth objective of the R3 Medium Density Residential zone seeks “*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.*” Similarly, Clause 4.3(1)(a) *Height of buildings* aims “*to ensure that the size and scale of development is compatible with the desired future character of the locality.*”

The Applicant seeks to rely on the potential height and floor space ratio (FSR) bonuses that could theoretically be achieved on adjoining or nearby sites under the LMR provisions of the Housing SEPP to argue that the subject area is undergoing transition and that the proposal is compatible with the desired future character of the area.

The above position is not supported. The proposal fails to demonstrate that the surrounding area is in transition or that the existing built form and streetscape are evolving towards a character consistent with a four-storey residential flat building typology. The established character of the locality remains predominantly low-scale, comprising two-storey dwelling houses and three-storey residential flat buildings with ground-level garages. There are currently no approvals or existing four-storey residential flat buildings along Dolphin Street of comparable height, scale, or bulk to the proposed development.

The references to 4-storey and higher developments are located either further south along Coogee Bay Road or towards Coogee, where the context is characterised by existing higher-density development. These examples are in a distinctly different urban setting and do not establish or inform the desired future character of the subject locality.

The Applicant’s assumption of an emerging higher-density character is speculative and unsubstantiated. No detailed modelling, or contextual analysis has been provided to demonstrate that comparable development could be achieved on adjoining or nearby properties, given the physical, topographical, and access constraints of the locality described above. In particular, there is no evidence that such sites could accommodate equivalent height and density increases while maintaining compliance with applicable planning controls relating to residential layouts, parking provision, deep soil and landscape areas, tree canopy coverage, common open space, building separation, visual bulk, privacy, and solar access.

In the case of the immediately adjoining properties, the Applicant would be required to demonstrate, at a minimum:

- A built form analysis demonstrating that sufficient building separation and visual privacy could be achieved between those sites and the subject property, consistent with the requirements of the Housing SEPP and the Apartment Design Guide (ADG).

In the absence of such evidence, the Applicant's reliance on potential theoretical redevelopment under the LMR provisions is not considered a valid or credible basis for defining the desired future character of the area. The proposal, therefore, fails to demonstrate that it appropriately responds to or aligns with either the existing or the desired future character of the locality. Approval of the application in its current form would set an undesirable precedent for the locality, leading to a gradual erosion of the established streetscape character and undermining the planning objectives for the area.

9.1.3. Primary and Secondary Street Setback

The front setbacks of the ground and first floors of the proposed development are generally consistent with the existing dwellings along Dolphin Street, which are staggered and range from approximately 2.7 m to 18 m.

The streetscape is predominantly characterised by two-storey dwellings and three storey residential flat buildings with ground floor garages. The proposed four storey built form with basement parking is inconsistent with the predominant streetscape and existing built form. The lack of sufficient setback at this level results in excessive bulk and scale, causing the upper level to dominate the streetscape along both Dolphin Street and Heath Street.

9.1.4. Building Separation

Pursuant to Part 3F-1 of the ADG, the minimum required separation distances from buildings to the side and rear boundaries are 6 metres for habitable rooms and balconies, and 3 metres for non-habitable rooms.

It is acknowledged that the lower-level units were originally approved as a multi dwelling housing development with compliant side setbacks, including a western side setback of 4.2 metres and an eastern side setback of 5 metres. However, the current proposal involves an additional storey and a change of use to a residential flat building, thereby triggering the application of the ADG and its associated building separation requirements.

The proposed development provides the following side setbacks from habitable rooms to boundaries:

- Western side boundary: 3–4 metres on the lower levels and 3–3.9 metres on the top level
- Eastern side boundary: 5 metres on the lower levels and 3.7 metres on the top level

The proposal fails to provide adequate building separation to the side boundaries. The reduced setbacks, particularly on the new upper level and eastern portion of Level 2, exacerbate visual bulk and result in unacceptable visual and acoustic privacy impacts, as well as increased overshadowing to neighbouring properties. The excessive building massing, compounded by the further reduced setbacks on Levels 2 and 3, is inconsistent with the prevailing pattern of development and incompatible with both the existing and desired future character of the area.

9.1.5. Incompatible design with the approved multi-dwelling housing on site

The strategy to introduce an additional level containing two oversized apartments above the approved, well-resolved six townhouses, which are appropriately stepped in accordance with the site's topography, is fundamentally flawed.

The proposal represents a poorly conceived attempt to increase density on a highly constrained site. This is demonstrated by several major design and compliance deficiencies, including excessive building height, insufficient building separation, cantilevered upper-level elements that exacerbate

visual bulk, unintegrated and potentially BCA non-compliant external stair access, the absence of direct pedestrian access from the ground floor or public domain, and unresolved void spaces between the approved development and the new upper level.

The resultant design lacks architectural coherence and fails to respond sensitively to the site constraints or the established character of Dolphin Street and Heath Street and its immediate surrounds. The proposal therefore represents a poor design outcome and is incompatible with the existing and desired future character of the locality.

9.1.6. Neighbouring residential amenity

Bulk and scale / Visual Impact

As previously discussed, the poor design of the proposed development, including excessive building height and massing, lack of building separation, unintegrated fire stairs and inappropriate cantilevering elements create significant visual impacts on adjoining properties.

Additionally, due to the significant topographical difference across Dolphin Street, with the northern side of the street situated approximately 7 m below the street level and southern side, any development on the southern side is elevated significantly relative to the northern properties. Consequently, any increase in building height on the southern side is visually amplified, resulting in a substantially greater impact on the northern properties and significantly affecting their outlook and streetscape amenity.

Visual privacy

- Front Elevation (frontage to Dolphin Street)

Overlooking impacts on the properties located along the northern side of Dolphin Street will arise from the proposed development due to the lack of consideration of the steep street topography. These properties are situated approximately 7 metres below street level, and the proposed design provides intrusive front setback of 3.8m at the upper level. Despite the inclusion of planter boxes along the edge, direct downward views will be available from the proposed top-floor balconies and windows into the rear yards of the dwellings on the northern side of Dolphin Street, leading to a significant loss of privacy.

These impacts could have been reasonably avoided through a more sensitive design response that incorporated increased front setbacks or other mitigating measures to respect the established topographical context and protect the amenity of neighbouring properties.

- Western Elevation

All windows on Levels 1 and 2 are privacy screened in accordance with the previous approval and have minimal privacy impacts. At Level 3, all new windows are proposed to be privacy screened, which minimise overlooking opportunities. The balcony at the rear of Unit 8 has potential overlooking impacts on neighbouring rear yards and is not acceptable.

The proposed external fire stairs along the western side include 1.6 m high privacy screens, which will assist in mitigating overlooking. However, the structure adds to the overall visual bulk of the development and will directly overlook the middle window of 1D Heath Street from Level 2.

- Eastern Elevation

At Levels 2 and 3, all new windows are proposed to be fitted with privacy screens and have minimal overlooking opportunities. The balcony at the rear of Unit 8 has potential overlooking impacts on neighbouring rear yards and is not acceptable.

- Southern Elevation (Secondary frontage to Heath Street)

All windows on Levels 1 and 2 remain privacy screened in accordance with the previous approval. For Level 3, the balcony of Unit 8 overlooks Heath Street and the roof areas of the adjoining

southern properties. Given the orientation and outlook, this does not result in any unreasonable privacy impacts.

- Conclusion

Overall, while privacy screens are proposed to address direct overlooking, the introduction of the additional storey and the external fire stairs along the western elevation result in increased opportunities for visual intrusion into adjoining properties.

The proposal does not achieve the minimum separation distances prescribed under Part 3F-1 of the Apartment Design Guide (ADG), and fails to demonstrate that acceptable levels of visual privacy are achieved. The reliance on privacy screens to mitigate overlooking further highlights the inadequacy of building separation and the poor design response to site constraints.

Solar Access

RDCP 2013 requires the living areas and at least 50% of the landscaped areas of neighbouring dwellings to receive a minimum of 3 hours access to direct sunlight between 8am and 4pm on 21 June (mid winter). Further, where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.

A review of the submitted shadow diagrams indicates that the proposed development would result in unreasonable additional overshadowing impacts on adjoining properties. The extent of these impacts on each affected property is summarised below:

14 Dolphin Street – to the west of the subject site

- POS: Additional overshadowing occurs between 8am and 9am. The POS is likely to continue receiving at least three hours of direct sunlight between 9am and 12pm, consistent with the DCP requirement.
- Windows (east elevation): Shadow impacts cannot be fully verified as no elevation shadow diagrams were submitted. However, given the location of the dwelling being northwest of the subject site, adverse impacts are considered unlikely.

1D Heath Street – to the west of the subject site

- POS: Additional overshadowing occurs between 8am and 10am. The POS will continue to receive more than three hours of direct sunlight between 11am and 4pm.
- Windows (east elevation): Currently receive limited solar access. Additional shadowing will occur to all east-facing windows at 10am, resulting in nil solar access to these from 8am to 4pm in mid-winter. No information has been provided regarding the function of these windows or whether alternate openings on the front elevation receive adequate sunlight. In the absence of this information, it is assumed that the proposal would result in an unreasonable loss of solar access to these openings.

20 Dolphin Street – to the east of the subject site

- POS: Additional overshadowing would occur between 1pm and 2pm. The POS located immediately to the rear of the dwelling currently receives minimal solar access due to the existing built form and self-shadowing from on-site structures. The proposal would further reduce the limited solar access currently available to this area.
- Windows (west elevation): Only a highlight window is indicated on the first floor, with ground floor openings not shown. The living and dining areas at the front are expected to continue receiving at least three hours of sunlight between 12pm and 3pm, as well as all-day solar access through the front façade openings.

22 Dolphin Street – to the east of the subject site

- POS: Additional overshadowing occurs between 2pm and 4pm. The POS is likely to continue receiving at least three hours of sunlight between 8am and 11am.
- Windows (west elevation): Elevation shadow diagrams were not submitted. In the absence of this information, it is assumed that the proposal would result in an unreasonable loss of solar access to these openings.

1 Heath Street (Vacant at the time of inspection (2 October) – to the south of the subject site

- POS: Likely to receive more than five hours of sunlight between 8am and 1pm.
- Windows (north elevation): Based on Council records for approved alterations and additions, if constructed as approved, the ground floor kitchen and family/dining area at the rear would achieve at least three hours of sunlight between 8am and 11am.

3 Heath Street – to the south of the subject site

- POS: Likely to receive more than five hours of sunlight between 8am and 1pm.
- Windows (north elevation): Elevation shadow diagrams were not submitted. The first-floor living room windows at the rear are likely to be affected by additional overshadowing from the proposed development. However, these windows are expected to continue receiving at least three hours of direct sunlight between 8am and 11am through the east / rear facing windows and glazed doors.

5 Heath Street – to the south of the subject site

- POS: Likely to receive more than five hours of sunlight between 8am and 1pm.
- Windows (north elevation): nil window openings on the north elevation and thus will not be adversely impacted by the proposed development.

Conclusion

Insufficient information has been provided by the Applicant to enable a robust and comprehensive assessment of solar access impacts, particularly due to the limited extent of the shadow diagrams, which do not adequately cover all relevant neighbouring properties and their boundaries, and the lack of detail regarding the use and function of adjoining windows.

Nevertheless, based on the information available, the proposal fails to provide adequate solar access to the private open spaces and habitable room windows of neighbouring dwellings, particularly those located immediately to the south and east of the site. This results in an adverse impact on the amenity of neighbouring properties and is primarily attributable to the excessive building height, bulk and massing of the development. The extent of overshadowing is therefore considered unreasonable and unacceptable.

9.1.7. BCA compliance

A BCA & Access Report prepared by Building Innovations Australia and dated 24 June 2025 was submitted with the application. The report identifies a number of non-compliances that rely on engineering performance solutions, including the new external fire stairs proposed on the western elevation.

However, specific details regarding the proposed performance solutions have not been provided. If the stairs are to be enclosed, this would further increase visual bulk and exacerbate massing impacts. Any modifications of this nature are likely to substantially affect the overall design. For this reason, detailed information on the performance solutions must be provided at the DA stage, rather than at the Construction Certificate stage, to ensure that the development outcome is acceptable in terms of built form, bulk, and streetscape impacts.

9.1.8. Insufficient Information

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

- Integrated Development: It is unclear whether the proposed works constitute “integrated development,” having regard to matters such as groundwater interception, dewatering, or other approvals required under State legislation. If the works do constitute integrated development, evidence should be provided demonstrating that the necessary referrals and approvals have been sought or will be sought.
- Architectural Plans:
 - The submitted architectural plans contain discrepancies relating to the secondary fire stairs at the rear, connecting from the basement to the ground floor, as the ground floor

stairs do not appear to align with the basement level. Additionally, the proposal is likely to result in further overshadowing impacts to the windows of 1D Heath Street.

- Proposed ground levels (RLs), including the front and rear yards and all landscaped areas along the side setbacks, were missing in plans.
- Parking space and storage allocations to each unit were missing in plans.
- ADG requires 50% of the required storage to be located within the apartment. Details were missing in plans to demonstrate compliance with this requirement.
- Details including fixtures and furniture arrangement of the communal open space were missing in plans.
- The submitted shadow diagrams do not cover the boundaries of several neighbouring properties, including, at a minimum, 14 Dolphin Street, 1D Heath Street, 20 Dolphin Street, 22 Dolphin Street, 1 Heath Street, and 3 Heath Street. Further, the elevation shadow diagrams for these properties were not submitted (missing 14 & 22 Dolphin Street and 3 Heath Street) to demonstrate appropriate solar access to neighbouring habitable rooms.
- Details including postal services and mailboxes were missing in plans.
- Design Analysis: The development application is not accompanied by a contextual analysis or urban design justification to assess the potential impacts of the proposed height exceedance within the character of the locality.
- Context Analysis: The development application is not accompanied by a context analysis demonstrating that comparable development, with equivalent height and density, could be achieved on adjoining or nearby properties while maintaining compliance with the applicable planning controls under the Housing SEPP, Apartment Design Guide (ADG), RLEP and RDCP. This includes, but is not limited to, compliance with requirements for residential layouts, floor space ratio, parking provision, deep soil and landscaped areas, tree canopy coverage, common open space, building separation, visual bulk, privacy, and solar access.
- Acoustic Report: The development application has not been accompanied by an Acoustic Report addressing the potential adverse acoustic impacts of the proposed development.
- Electricity Supply: The development application has not been accompanied by an infrastructure assessment to determine if adequate arrangements for electricity supply have been made to accommodate the additional dwellings and load on the existing electricity network.
- Performance Solution Report: The development application has not been accompanied by a Performance Solution Report by a suitably qualified fire engineer to determine the viability of the performance solutions raised in the submitted BCA Performance Requirements Compliance Statement.
- Geotechnical report: The development application has not been accompanied by a site-specific geotechnical investigation and report prepared by a suitably qualified geotechnical engineer that:
 - a. Confirms the finished basement RL(s) required to accommodate the shuffling car stackers and provides borehole / CPT data at those levels;
 - b. Assesses soil stratigraphy, groundwater table/seepage conditions, and the potential for perched water or long-term groundwater inflow;
 - c. Provides design parameters (including allowable bearing capacities, lateral earth pressures, temporary shoring recommendations, and settlement estimates) specific to the proposed excavation depth and loading; and
 - d. States any limitations, recommended construction methods, dewatering requirements, and monitoring regimes necessary to manage geotechnical risk and to protect adjacent properties and public infrastructure.
- Structural Engineering report: The development application has not been accompanied by a structural engineering report that:
 - a) demonstrates how the proposed excavation and shuffling car stacker loads will be accommodated, referencing the revised geotechnical parameters.
 - b) Demonstrates the structural adequacy of the proposed development, especially the new stairs and the cantilevering top floor
- Market analysis: Part 4K of the Apartment Design Guide (ADG) requires the provision of a mix of apartment types. The proposal, however, provides only three-bedroom apartments. The

submitted statement against the Housing SEPP, prepared by Architectit, indicates that this is “consistent with market trends/demands.” Supporting evidence in the form of market analysis or other relevant documentation to substantiate this claim was not provided

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

10. Conclusion

That the application to alterations and additions to an approved multi dwelling housing development including construction of a new level (4th storey) comprising two (2) residential units and change of use to a residential flat building (Variation to Building Height) at 18 Dolphin Street be refused for the reasons listed at the beginning of this report.

D64/25

Appendix 1: Referrals

1. Design Excellence Advisory Panel Comments

- The Panel notes the site benefits from an existing approval for a three-storey townhouse development currently under construction. The applicant now seeks to amend this approval by integrating the previously approved townhouses with newly introduced apartment-style dwellings on the fourth (top) level to achieve an Apartment Design Guide (ADG) typology. The Panel finds this hybrid strategy to be fundamentally flawed, generating substantial urban design, architectural, amenity and buildability concerns. And as a result the Panel limits its commentary to higher-order matters.
- The overall massing strategy is considered problematic and “top-heavy.” The new upper level, which cantilevers above the lower townhouse forms, results in a visually unbalanced composition that is inconsistent with general urban design and architectural principles. The proposed form largely appears out of character with the established built form context of Randwick, and sits in conflicts with the approved town-houses at the lower levels, and therefore cannot be supported.
- Should the applicant wish to pursue additional height, the Panel recommends a complete redesign to establish a purpose-designed residential flat building compliant with the NSW ADG. However, given that construction of the original development is already underway, this may not be feasible within the current approval pathway.
- The Panel identified significant concerns regarding pedestrian access and circulation. The top floor apartments are disconnected from the primary street frontage and rely on a convoluted access arrangement. The proposal also raises potential issues regarding compliance with the National Construction Code (NCC) and the Design and Building Practitioners Act 2020, particularly in relation to fire separation, structural integrity and waterproofing between the completed and proposed building elements. The floor-to-floor and floor-to-ceiling heights also appear unresolved in regard to both - compliance and amenity.
- The unresolved “void” spaces between the existing/approved and proposed components further indicate a lack of integration and poor spatial resolution in the design.
- Overall, the new upper level appears to have no coherent relationship with the levels below, resulting in an outcome that prioritises additional yield over urban design quality and residential amenity. The proposal represents overdevelopment of the site, with multiple non-compliances against the NSW Apartment Design Guide. Landscape outcomes, including genuine deep soil provision and communal open space amenity, also remain questionable.
- The Panel questions whether the 3 x proposed trees in the rear of the site are being provided with adequate soil volume given they are not planted in an identified Deep Soil Zone and appear to have limited soil volume. The planters in which the trees sit are small with planter walls around some and areas of paving adjacent. The Applicant should ensure that all planters provide suitable soil depth/volume and width for the proposed plantings. This includes any upper level planters e.g. on Level 3 where the planters currently shown are of inadequate width to be viable.

CONCLUSION

The Panel does not support the proposal in its current form and configuration. The design represents an inappropriate attempt to retrofit apartment-style development onto an approved townhouse configuration, leading to significant planning, design and construction problems. A comprehensive redesign would be required to achieve a coherent, contextually appropriate and compliant built form.

General Comments

Drainage Comments

Parking Comments

Motorbike Parking

Page 44

Bicycle Parking

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

Bicycle Parking Required = $8/2 + 8/10$
 = 4.8
 = 5 Spaces (rounded)

Bicycle Parking proposed = 4

There is a 1 space shortfall in the bicycle parking however no objections area raised as it is very minor.

Carpark Layout

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

Stacker Comments

The submitted plans indicate that instead of three individual stackers there is now one multivehicle stacker/shuffler system proposed. The width of the spaces and adjacent parking aisle will still achieve compliance with AS 2890.1 and no objections are raised to the amended stacker system.

The engineering condition (99A) in the original consent DA/371/2019 requiring individual stackers be allocated to specific units is no longer appropriate for the shuffler system and accordingly this condition is recommended for deletion a part of the amending DA.

Undergrounding of site feed power lines

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

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

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

Waste Management Comments

The Waste Management Plan submitted with the application shall not be approved as part of this consent as it does not meet Council requirements. Development Engineering has included waste management conditions in this report requiring a new waste management plan to be approved prior to commencement of any works.

The applicant is required to submit to Council and have approved by Council's Director Planning, a Waste Management Plan (WMP) detailing waste and recycling storage and disposal for the development site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the units will operate.

Comments on the number of Waste Bins

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

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

There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 2 x 240L bins also be provided for FOGO.

*Total Number of BINS required = 4 (normal) + 4 (recycling) + 2 (FOGO)
= 10 x 240L BINS*

Total Number of BINS proposed = 10 x 240L bins (complies)

2.2. Landscaping Officer

Landscape Comments

Construction of the development approved under DA/371/2019 is already well underway on site, with this new application seeking a slightly revised layout for the Basement Level, a new 4th Floor Level, along with some other minor amendments.

Condition 38 of DA/371/2019 approved the previous set of Landscape Plans, with the only differences with the new landscape scheme submitted with this application being:

- Use of alternative species throughout which will still maintain the intent of the originally adopted scheme.*
- Deletion of the podium planter boxes from the private balconies of Units 1-6 along the eastern elevation of Level 1.*
- Inclusion of narrow podium planters on the outdoor terraces for Units 7 & 8 at both the northern and southern ends respectively of Level 3.*

As these new Landscape Plans maintain roughly the same level of detail and treatment, as well as the quantity of canopy trees, no objections are raised to the proposal, with it also noted that all vegetation within the subject site has already been removed under the authority granted by condition 72 of DA/371/2019.

The Development Engineers comments provided further above confirm that only one of their conditions provided for DA/371/2019 is affected, and following discussions with the assessing officer, it was also agreed for the purpose of this application to only advise where conditions differ from the previous consent, rather than providing a whole new report, as follows.

*In this regard, the tree referenced for protection in condition 17 below was removed earlier this year via mutual agreement reached between the neighbour/tree owner and developer (refer D05738038), with Council also willing to facilitate this process given that major excavations were being performed in this same area to upgrade a Council pipe and construct a new retaining wall, and as such, **this condition is no longer applicable and needs to be deleted from the consent.***

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

gsa planning

Randwick LEP 2012 Clause 4.6 Exceptions to Development Standards – Height of buildings

Proposed Alterations and Additions to an Approved
Multi Dwelling Housing Development and Change
of Use to a Residential Flat Building at

**No. 18 Dolphin Street,
Randwick**

Prepared for:

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D64/25

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Sasan Adabjou

SITE ADDRESS: No. 18 Dolphin Street, Randwick

PROPOSAL: Proposed alterations and additions to an approved multi dwelling housing development and change of use to a residential flat building

1. (i) Name of the applicable planning instrument which specifies the development standard:

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

(ii) The land is zoned:

R3 Medium Density Residential under the Randwick Local Environmental Plan (LEP) 2013. The objectives of the R3 Medium Density Residential Zone are as stated:

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

(iii) The number of the relevant clause therein:

Clause 180 of the Housing SEPP, which is stated as follows:

180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4

- (1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.
- (2) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area—
 - (a) a maximum floor space ratio of 2.2:1,
 - (b) for residential flat buildings—a maximum building height of 22m,
 - (c) for a building containing shop top housing—a maximum building height of 24m.
- (3) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing outer area—
 - (a) a maximum floor space ratio of 1.5:1,
 - (b) a maximum building height of 17.5m.

This Clause 4.6 Written Request for Exception to a Development Standard should be read in conjunction with the Statement of Environmental Effects (SEE), prepared by GSA Planning in support of Development Application to Randwick City Council (Council) for Proposed alterations and additions to an approved multi dwelling housing development and change of use to a residential flat building.

2. Overview

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

3. Context or Background

On **09 July 2019**, a Development Application (DA/371/2019) was submitted with Randwick Council for 'demolition of existing structures and construction of six three-storey multi dwelling housing with roof terraces, basement parking and storage, landscaping and associated works' at No. 18 Dolphin Street, Randwick. On **14 May 2020**, the application was approved by Council.

On **19 October 2020**, a Modification Application (DA/371/2019/A) was submitted with Randwick Council for 'modification of approved development including reconfigured basement to accommodate car stackers, increased floor area at Level 2 towards the east, general layout changes and changes to façade' at No. 18 Dolphin Street, Randwick. On **27 May 2021**, the application was approved by Council.

On **10 October 2023**, a Complying Development Certificate (CDC) was issued by Land Development Certificates for 'strata subdivision - six lot residential development' at No. 18 Dolphin Street, Randwick (CDC/326/2023).

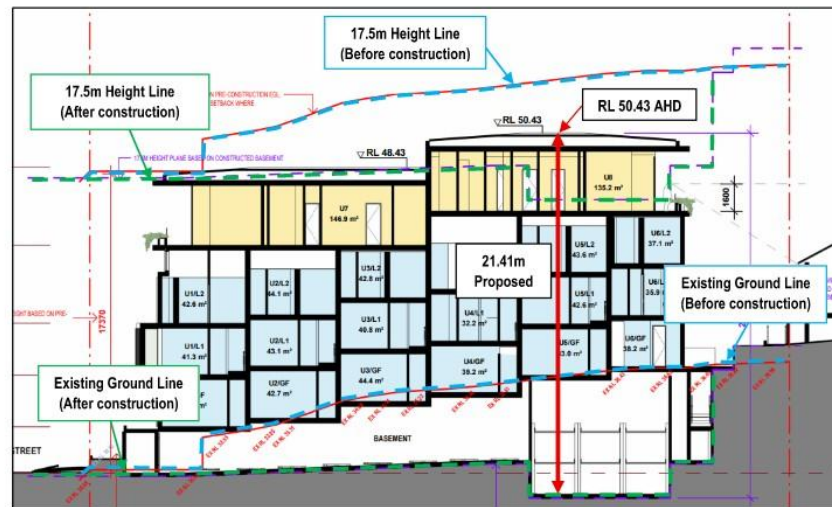
4. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 180 of the State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**), which states that under the LMR provisions for land located within 400–800 metres of a Centre in the R3 Medium Density Zone, a maximum height of 17.5 metres applies to residential flat buildings. Clause 180 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The subject site falls within a 400-800m walking distance of the Randwick Town Centre, identified as a 'Town Centre' on the *Town Centres Map*. Therefore, the site is in a low and mid rise housing area. Specifically, it is in a low and mid rise housing outer area.

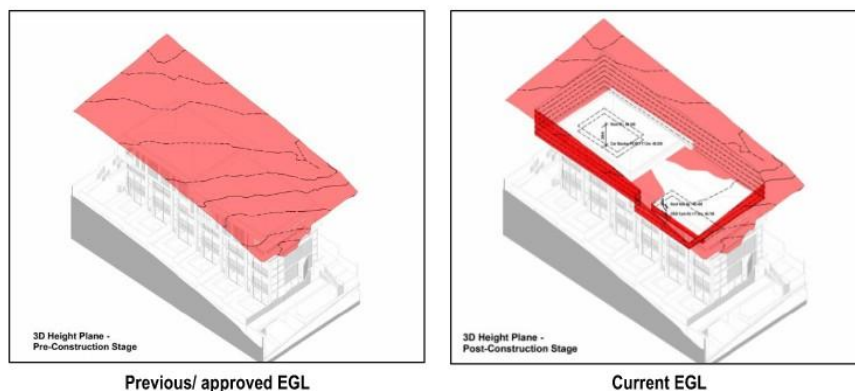
The site is the subject of a previous approval for a three storey multi dwelling housing above a basement level (DA/371/2019). The approval has a maximum height of 9.27 metres, measured from the approved highest roof point at RL 46.72 AHD to the existing ground line immediately below. Construction has since commenced on site and is currently underway, resulting in changes to the existing ground line, which has been lowered due to excavation.

The proposed development in this application will predominantly maintain the approved scheme and includes a new level on top, portions of which exceed the maximum height standard. The proposed four storey residential flat building above a basement level will have an overall height of 21.41 metres. The proposed maximum height is measured from the highest roof level at RL 50.43 AHD to the existing ground line immediately below, created by excavation undertaken pursuant to the approved DA/371/2019. This represents a departure of 3.91m (22% variation) (see **Figures 1 and 2** on the following page).



Source: Architectit

Figure 1: Approved and Proposed Maximum Height
Showing Existing Ground Line before & after Construction



Source: Architectit

Figure 2: Height Blanket Showing Location of Variation
in relation to Existing Ground Line (EGL) before and after Construction

In our opinion, the proposed variation, primarily located at the rear, is technical in nature. This is because the variation results directly from a change to the existing ground line following construction. When assessed against the pre-construction/ approved existing ground line, the proposed development is entirely below the standard.

In particular, the proposed maximum height occurs at the rear due to a drop in the existing ground level resulting from excavation associated with the approved car stacker. The proposal retains the car stacker arrangement relative to the existing ground line as approved. Also, the variation is in part a function of the site's steep topography, which required greater excavation at the rear to accommodate car parking as part of the previous approval. Further, due to the steep slope, the proposed Unit 8 at the rear has a higher RL than its counterpart Unit 7, resulting in a greater variation at this part of the development.

In this regard, it is important to note that the technical variation is consistent with the Court's decision in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (*Bettar*). This is also consistent with the Court's decision in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (*Merman*).

In *Bettar* the Court dealt with a site with similar characteristics to the subject site in that a basement existed on some parts of the site and not others. The Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context and made the following relevant comments:

*'It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012. As one of the purposes of the development standard is to relate the proposal to its context, it follows that **the determination of the existing ground level should bear some relationship to the overall topography** that includes the site...*

*The definition of basement in LEP 2012 is the space of a building where the floor level of that space is predominantly below existing ground level and where the floor level of the storey immediately above is less than 1 metre above existing ground level. From this definition, it does **not follow that existing ground level becomes the level of the basement floor or the soil beneath the basement following the construction of a basement. A basement is, by definition, below ground level and so the level of the basement floor cannot be taken to be existing ground level.***

For these reasons, I do not accept [the] approach of defining existing ground level as the ground floor level of the existing building and then dropping it down to the basement level in the north-eastern corner of the site where the existing basement is located. This...relates only to a building that is to be demolished and has no relationship to the context of the site...

*I prefer [the alternate] approach to determining the existing ground level because **the level of the footpath at the boundary bears a relationship to the context and the overall topography** that includes the site and remains relevant once the existing building is demolished.'* [Bold emphasis added]

In *Merman*, a portion of the site was excavated for the construction of the existing building and the ground level was lowered by the excavation within the footprint of the existing building. If the excavated ground level was used as the reference point for the height, there would be a dip in that plane that does not reflect in the overall topography of the hill.

The Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'Clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. The clause 4.6 request was upheld, and development consent was granted.

A similar approach is applicable to the subject site, where the variation is attributed to the existing ground line. Additionally, when viewed from a pedestrian's eye level within Dolphin Street, the variation at the front is unlikely to be visible due to the steep topography, which elevates the built form above street level, and due to the narrow width of the street, which limits the available viewing angle.

When viewed from Heath Street at the rear, Unit 8 is set further back from the rear boundary than the approved levels below, minimising its visual impact. Also, the elevated peripheral planter on its balcony will soften the appearance of the building and improves the character of the site. The proposal has been skilfully designed and incorporates quality materials and finishes in natural or neutral tones that blend with the surrounding natural and built environment, resulting in a seamless integration into the context.

The variation forms part of a development that is consistent with the zone objectives by contributing to housing supply while remaining in keeping with the emerging and desired future character of the area. The proposal has been designed with consideration of the amenity of neighbouring properties, with the non-compliance maintaining the approved levels of solar access, privacy, and views, as discussed further in this report. Accordingly, the proposed height responds well to the surrounding context.

5. Consistency with Objectives of Clause 4.6

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

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

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development, having regard to the specific circumstances of this case. This is because the non-compliance is technical in nature and predominantly the result of previous excavation on site, undertaken pursuant to the previous approval for construction of a multi dwelling housing (DA/371/2019). The proposed maximum height occurs at the rear, where there is a drop to the newly constructed existing ground level due to the car stackers. The proposal will maintain the approved arrangement of the car stackers in relation to the existing ground line. The maximum height is also attributed to the area's steep topography, which results in Unit 8 being located at a higher RL compared to Unit 7 at the front. When viewed from Dolphin Street, the non-compliance is relatively minor and limited to a portion of the Unit 7 roof that is unlikely to be discernible compared to a compliant roof edge. When viewed from Heath Street, the variation associated with Unit 8 is set further back from the rear boundary than the approved levels below, which will reduce its visual perception and soften the streetscape appearance.

It is important to note that considering the LMR provisions, the area is expected to comprise developments of up to four storeys in height. These developments, along with other built forms currently under construction, will shape the character of locality. The proposal has been designed to present as a four storey development above a garage level, resulting in a built form consistent with the surrounding context and in keeping with the desired future character of the area, as envisaged under the LMR provisions (see **Figure 3** on the following page).

The non-compliance, whilst maintaining the approved levels of amenity for neighbouring properties, satisfy the zone objectives on housing supply and enriching housing typology, demonstrating the technical variation achieves contextual consistency and is in keeping with the desired future character of the area. Accordingly, flexibility will achieve a better outcome for and from the development and the variation is acceptable in this instance.



Source: Google Aerial View

Figure 3: Aerial View of Site within the Context

6. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

(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.

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

6.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [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 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.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the height standard, the proposal achieves the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. It is noted that the Housing SEPP does not include stated objectives for the development standard as it applies to low and mid rise housing. In the absence of such objectives, we refer to the objectives outlined in Clause 4.3 of the Randwick Local Environmental Plan 2013, relating to building height. Reasons why the proposed development achieves the objectives of the height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b. The zone objectives (Clause 2.3);
- c. The land use table (at the end of Part 2);
- d. The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map, which prescribes a maximum height of 9.5m; &
 - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map, which prescribes a maximum FSR of 0.75:1.

Additionally, the desired future character is shaped by the text of the Housing SEPP and expected developments of up to four storeys in height in the vicinity. The relevant clauses in the SEPP which relate to urban character and built form are:

- e. The State Environmental Planning Policy (Housing) 2021:
 - Under the Low and Mid Rise (LMR) provisions for a residential flat building located within 400–800 metres of a Centre in the R3 Medium Density Zone:
 - i. Clause 176(2) allows for a maximum height of 17.5 metres and 4 storeys or fewer; &
 - ii. Clause 180(3) allows for a maximum height of 17.5 metres and a Floor space ratio of 1.5:1.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the desired future character. The permissible uses under the LEP are as follows:

*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*

The R3 Medium Density Residential zoning envisages residential flat buildings which is proposed on the site. The subject site is located within an area of evolving character, featuring contemporary multi storey residential flat buildings above at grade level garages, similar to that proposed. The 17.5m height limit under the Housing SEPP envisages a built form of up to four storeys above a basement level, which is consistent with other built forms in the vicinity, including several multi storey residential flat buildings (see **Figure 3** on page 7).

The proposed built form is consistent with approvals in the LGA, which collectively form the emerging and desired future character of the area. There are a number of examples of R3 zoned medium density developments, which have been approved under the current controls with varying degrees of height non-compliances. It is recognised that each application is assessed on its own merits, and each site has different characteristics. However, in accordance with *SJD*, it is a relevant consideration to understand if Council has accepted breaches to the height standard in the past, under what circumstances these were supported and if indeed there are any comparable principles to the subject DA. Based on Council's Clause 4.6 Register, these include the following:

DA No.	Address	Variation
DA/2/2021	No. 1 Adams Avenue, Malabar	24.5%
DA/161/2022	No. 56 Bream Street, Coogee	23%
DA/200/2023	No. 10 Moore Street Coogee	27.57%
DA/04/2021	No. 76 Bream Street, Coogee	20.4%
DA/179/2020	No. 82, Mount Street, Coogee	18.8%
DA/133/2020	No. 24 Beach Street, Coogee	9.73%
DA/88/2020	No. 78 Bream Street, Coogee	61.2%
DA/459/2017	Nos. 1-3 Marcel Avenue, Coogee	20%

The environmental grounds that Council accepted for breaching the standard included compatibility with the surrounding development in terms of scale, built form and context; and no unreasonable impacts on the amenity of adjoining properties or locality.

The proposal will predominantly retain the built form of the approved scheme and introduce one new residential level that in line with the zone objectives on housing supply will accommodate two additional units. Also, the combination of the approved and proposed schemes in line with the zone objective will provide for a variety of housing types. These demonstrate that the variation is part of a development that is in keeping with the desired future character of the area.

The variation includes a relatively minor portion at the front and another at the rear of the site. When viewed from a pedestrian's eye level in Dolphin Street, the front variation is unlikely to be distinguishable. As such, the primary streetscape frontage will present consistent with a compliant envelope. When viewed from Heath Street at the rear, Unit 8 is set further back from the rear boundary than the approved levels below, minimising its visual impact. Also, the elevated peripheral planter on its balcony will soften the appearance of the building and improves the character of the site.

The proposed maximum height occurs at the rear due to a drop in the existing ground level resulting from excavation for the approved car stacker. The proposal retains the car stacker arrangement relative to the existing ground line as approved. The variation is due to previous excavation, which resulted in a lowered existing ground line. When considering the pre-construction existing ground level, the development sits below the permissible height, indicating the variation is technical in nature.

As the proposed four storey residential flat building above a basement level is consistent with the desired medium density residential character envisaged under the LMR provisions and with other approved developments in the vicinity, it can be considered consistent with the desired future character in accordance with Objective (a).

(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 does not include any contributory item, is not located within a Heritage Conservation Area, and does not adjoin any heritage item. However, a local Heritage Item (Item L353), relating to a sandstone retaining wall and embankment, is located on the northern side of Dolphin Street, opposite the site. As this item is below the street level and concealed behind vegetation, the variation is unlikely to affect its heritage significance (see **Photographs 1 and 2**).

Additionally, due to the minor extent of the variation, limited to a portion of the roof and not distinguishable from a pedestrian's eye level along Dolphin Street, the variation will not be visible from the heritage item. Moreover, the variation results from the change to the existing ground line following commencement of construction, denoting the non-compliance is technical in nature and the proposal does not represent overdevelopment. Also, the non-compliance at the rear portion of the site will not be visible from Dolphin Street. Accordingly, the heritage value of the item will be maintained.



Photograph 1: The position of the heritage item in relation to the subject site, as viewed from the site looking northwest



Photograph 2: The position of the item in relation to Dolphin Street, as viewed from Dolphin Street looking west

- (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.

Visual Bulk

The proposal provides a bulk and scale consistent with the permissible standard and other multi storey developments in the area. As indicated, the variation is directly a result of the change to the existing ground line following the commencement of construction on site pursuant to the approval. When considering the pre-construction existing ground line, the proposed four storey built form above a basement level is entirely below the standard. Therefore, as the variation is technical in nature, the proposal does not represent overdevelopment of the site.

In fact, when viewed from Dolphin Street, the variation is unlikely to be visible due to its relatively minor extent, the elevated built form due to the steep topography, and the narrow street width, as discussed elsewhere in this report. When viewed from Heath Street at the rear, Unit 8 is set further back from the rear boundary than the approved levels below, minimising its visual impact. Also, the balcony has peripheral planters that soften the built form's appearance.

The portion of Unit 8 that exceeds the standard utilises quality materials and finishes, adds articulation to the rear façade, and integrates well with the approved scheme. The development has been designed with consideration of the surrounding developments within the medium density context and is in keeping with the desired future character of the area. As such, the non-compliance will not contribute to visual bulk when viewed from the surrounding public and private domains.

Privacy

The non-compliance relates to a minor portion of the roof at the front that does not include any openings or areas of private open space, indicating no privacy impact. Also, the side windows of Unit 8 that exceed the standard have privacy screens, and to the south the openings face Heath Street at the rear, ensuring privacy between dwellings is maintained. Notably, the balcony of Unit 8 provides a set back from the edges, which further contributes to privacy. Accordingly, the variation will maintain the approved levels of amenity for the neighbouring sites.

Views

In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the *Tenacity v Warringah Council* [2004] NSWLEC 140. Our assessment of the proposal against this planning principle is included below. The four steps in assessing view affectation are considered as follows:

- *Assessment of the Views Affected*
- *From What Part of the Property are the Views Obtained?*
- *The Extent of the Impact*
- *The Reasonableness of the Proposal*

It is noted our assessment has relied on an inspection around the subject site, real estate photographs, aerial photography, and survey information available at the time of preparing this document. Given the site's location, there do not appear to be any significant views available across the site; and the DCP also does not identify any notable views or vistas that may be affected by the proposed new level.

As indicated, the variation is technical in nature and is attributed to changes to the existing ground line following the excavation under the approved DA. When considering the pre-construction existing ground line, the new works comply the maximum height limit (see **Figure 2** on page 4). Regardless, the new level, inclusive of the variation, allows for view sharing.

Specifically, the site is located in an area with a steep topography, featuring a fall of approximately 9.6m from Heath Street to Dolphin Street. This indicates that neighbouring properties to the south are situated at a higher level than the subject site, and as such, any potential views from these properties are unlikely to be affected. Further, the new top floor addition has side setbacks consistent with the approval at lower levels, maintaining potential view corridors. Additionally, as these neighbouring sites comprise low rise one and two storey buildings, their potential views are already constrained, indicating the variation will not result in any greater impact compared to the approval.

Similarly, due to the steep topography, properties to the north are positioned below street level, indicating that the variation will not impact views for buildings opposite Dolphin Street. Further, the variation is mainly located at the rear, indicating no view impact for the northern properties that are concealed behind dense vegetation.

With respect to neighbouring developments to the sides, side facing windows are typically screened by dense vegetation, which limits views. In addition, due to the slope of the area descending to the east, properties to the west are less likely to be affected. To the east, existing dwellings are generally located at the front portion of their respective sites, with side windows oriented towards adjacent built forms rather than the broader surrounding greenery. Moreover, the neighbouring properties to the sides are low rise buildings, indicating their potential views are already constrained and the variation will not result in any greater impact compared to the approved development. Accordingly, the proposed non-compliance is considered appropriate in terms of view sharing.

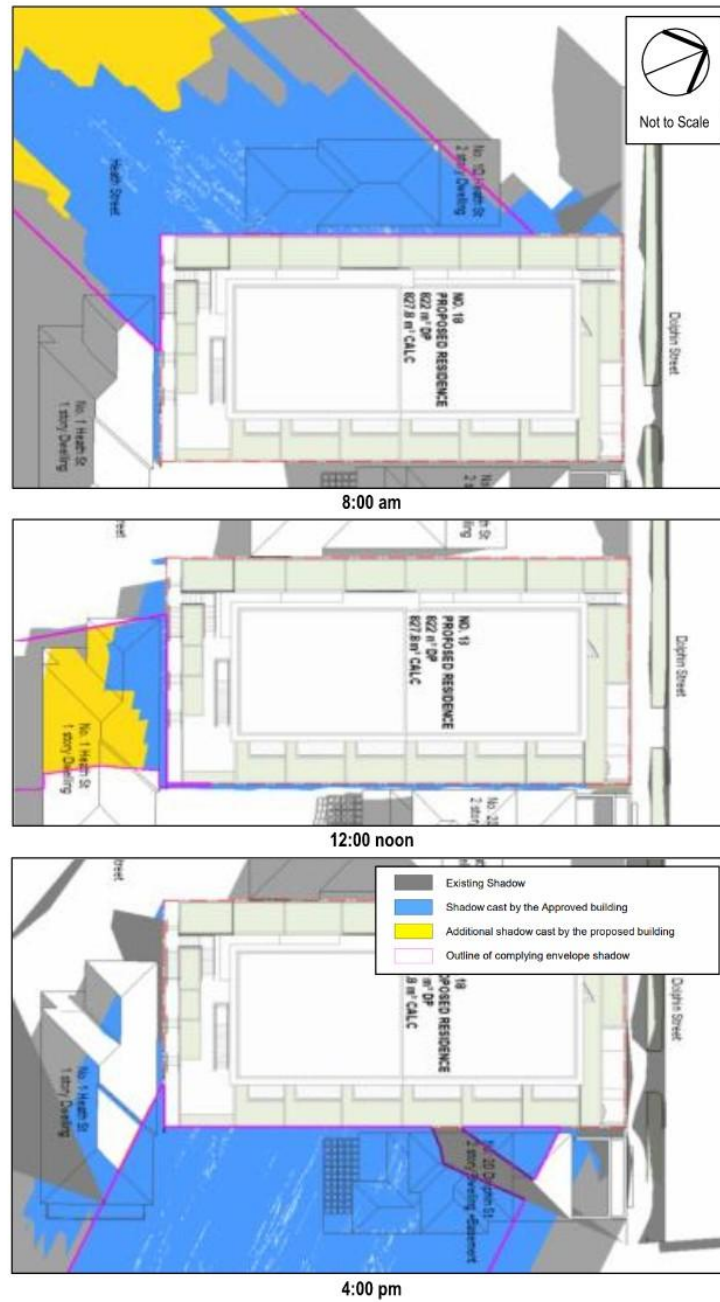
Solar Access

To assess the effect of the proposed development in terms of solar access, hourly plan and elevational shadows as well as view from the sun diagrams have been prepared for between 8:00am and 4:00pm for the winter solstice (June 21).

These diagrams indicate that the variation will not cast additional shadow to the landscaped areas of the neighbouring. The elevational shadow diagrams indicate that any additional shadow to neighbouring living room windows is limited to a negligible portion of a first floor window at No. 1 Heath Street at 11:00 am only. Importantly, this window will continue to receive more than three hours of sunlight, as recommended under the DCP (see **Figures 4 and 5** on the following pages).

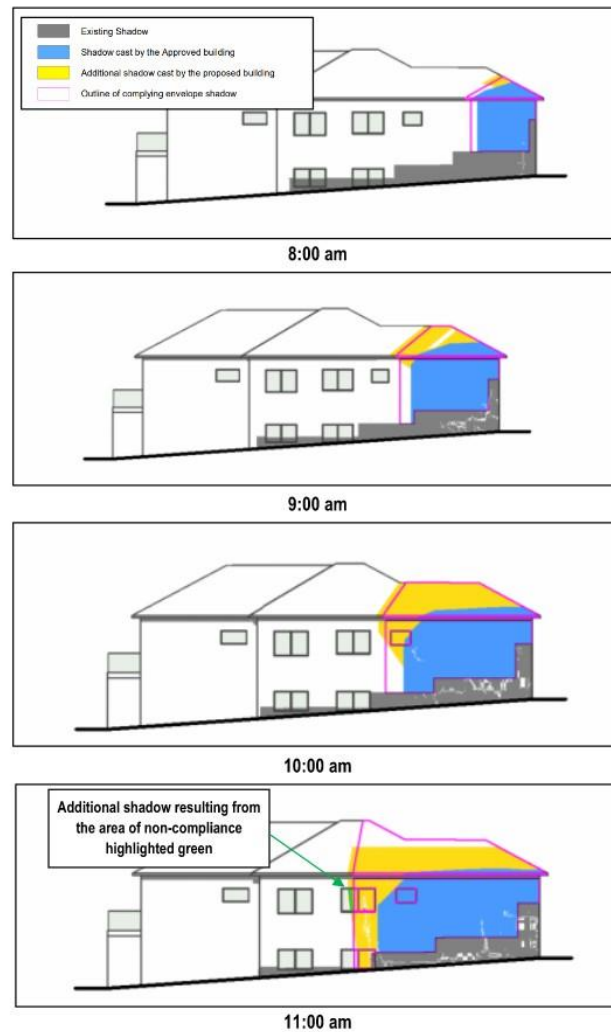
Importantly, the greatest area of non-compliance occurs at the rear and as indicated, is technical in nature. This demonstrates that the impact of the proposed technical breach is equivalent to the impact of a built form assessed against the pre-construction existing ground level, which would result in a compliant envelope.

Accordingly, the proposed technical variation is considered appropriate in terms of solar access.



Source: Architectit

Figure 4: Shadow Diagrams in Plan



Source: Architectit

**Figure 5: Elevational Shadow Diagrams at No. 1 Heath Street
Demonstrating Consistency with the DCP Requirement**

6.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

Technical Variation due to Previous Excavation

The development includes alterations to an approved three storey multi dwelling housing above a basement level (DA/371/2019). As construction on site has commenced, the existing ground level has been altered to accommodate the approved basement. The proposal will predominantly retain the approved scheme and includes a new floor level (Level 3), portions of which exceed the standard. However, when considering the pre-construction existing ground line, the proposed four storey residential flat building above a basement level remains entirely below the permissible height limit, indicating the variation is technical in nature. As discussed in detail in Section 4.0 of this report, proposed variation in this regard is consistent with the Court's decisions in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (*Bettar*) and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (*Merman*).

The area of greatest variation occurs at the rear, where there is a drop in the existing ground line. This drop is associated with the approved car stacker. The proposal will not alter the location of the car stacker, nor will it result in any changes to its relationship with the existing ground line. The only change proposed is to modify the system to a shuffle stacker to suit the new units.

Contextual Consistency

The non-compliance includes a relatively minor portion at the front, with the greater area of variation at the rear. When viewed from a pedestrian's eye level in Dolphin Street, the front variation is unlikely to be discernible as it occurs within the roof structure. As such, the main façade will present consistent with a compliant envelope. When viewed from Heath Street at the rear, Unit 8 is set further back from the rear boundary than the approved levels below, minimising its visual impact. Also, the elevated peripheral planter on its balcony will soften the appearance of the building and improves the character of the site.

The variation is part of a development that predominantly retains the approved scheme and introduces two new units within a medium density area. This contributes to achieving the zone objectives on housing supply and typology, better serving the housing needs of a wider population. This will enhance the character of the site and promote good design and amenity, in accordance with Object 1.3(g) of the EPA Act. All of these indicate alignment with the desired future character of the area.

Importantly, considering the LMR provisions, the area is expected to comprise developments of up to four storeys in height. These developments, along with other built forms currently under construction, will shape the character of locality. The proposal has been designed to present as a four storey development above a garage level, resulting in a built form consistent within the context and in keeping with the desired future character of the area, as envisaged under the LMR provisions.

Economic and Orderly Development

When compared to the approval, the proposed variation facilitates the construction of a residential flat building with two additional units within the R3 Medium Density Residential Zone, on a site located in a highly sought after area and near public transport services and local amenities. It is also consistent with the aim of the LMR policy.

Strict enforcement of the standard would require a reduction in the floor to ceiling height of Unit 7, which would compromise internal amenity and the overall design quality of the development, and would result in the removal of Unit 8. This scenario does not represent an orderly or economic use of valuable urban land, given the intent of the LMR provisions for sites located in close proximity to a Centre. Accordingly, the proposed variation will result in a better outcome for and from the development, in accordance with Object 1.3(c) of the EPA Act.

Environmental Amenity

The variation is a direct result of the previous excavation works on site, which altered the existing ground line. When considering the pre-construction existing ground level, the development sits entirely below the permissible height. As indicated, the variation is also influenced by the steep topography and the resulting drop in the existing ground line. All of these indicate that the proposed built form does not represent overdevelopment of the site. Our assessment under Test 1 has demonstrated that, notwithstanding the variation, the proposal will reasonably maintain neighbours' privacy, solar access, and views. The areas of non-compliance are well integrated within the overall envelope, demonstrating that the variation relates well to surrounding development and does not create environmental impacts.

Accordingly, in our opinion, the non-compliance will achieve the objectives of the zone and is in keeping with the emerging and desired future character of the area. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

7. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 180 of the Housing SEPP	
12	What is the control	1 & 2	17.5m (LMR)	
14	Precondition to Enlivening the Power –		Positive opinion can be formed as detailed below.	YES
15, 25	Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	6.1	The proposal satisfies Test 1 of <i>Wehbe</i> : • The objectives of the standard are achieved notwithstanding the non-compliance with the standard.	YES
23-24	Second Aspect is Clause 4.6(3)(b) – 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 that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus 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. b) 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.	6.2	Sufficient environmental planning grounds include, inter alia: • Technical variation due to previous excavation; • Contextual consistency; • Economic and orderly development; • Environmental amenity; and • The proposed height facilitates a medium density development achieves the planning objectives of the area.	YES

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Clause 4.6 Exceptions to Development Standards – Height of Buildings
No. 18 Dolphin Street, Randwick - Job No. 25199

Page 17

D64/25

Appendix 3: Housing SEPP 2021 Compliance Table**1. Chapter 4 'Design of Residential Apartment Development' Compliance Table**

Standard	Proposal	Compliance
Part 4: Design of residential apartment development		
148 Non-discretionary development standards for residential apartment development		
(2) The following are non-discretionary development standards—		
(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,	The proposed development provides sufficient car parking as specified in Part 3J of the Apartment Design Guide.	Yes
(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,	The proposed development provides sufficient minimum internal area for the 3 bedroom units.	Yes
(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	The proposed development provides sufficient minimum ceiling heights for habitable rooms in the development. However, the excessive ceiling heights of 3.5m for the top floor apartments contribute to the non-compliance of the building height and should be reduced to 2.7m.	Yes

2. Chapter 6 'Low and Mid Rise Housing' Compliance Table

Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
Division 1 Preliminary		
174 Development permitted with development consent		
Development for the purposes of residential flat buildings is permitted with development consent on land to which this chapter applies in a low and mid rise housing area in Zone R2 Low Density Residential or R3 Medium Density Residential.	Proposal is for a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes
176 Development standards—low and mid rise housing outer area		

Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
(1) This section applies to land in a low and mid rise housing outer area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site falls within a low and mid rise housing outer area in Zone R3 Medium Density, being land within 800m walking distance of the 'Randwick town centre and light rail station'.	Yes
(2) Development consent must not be granted for development for the following purposes if a resulting building will have a building height of up to 17.5m unless the consent authority is satisfied that the building will have 4 storeys or fewer— (a) residential flat buildings, (b) buildings containing shop top housing.	Proposal = 4 storeys	Yes
177 Landscaping—residential flat buildings or shop top housing		
(1) This section applies to land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site falls within a low and mid rise housing outer area in Zone R3 Medium Density.	Yes
(2) Development consent must not be granted for development for the purposes of residential flat buildings or shop top housing unless the consent authority has considered the <i>Tree Canopy Guide for Low and Mid Rise Housing</i> , published by the Department in February 2025.	Site area = 827.8sqm Min tree canopy = 15% Min deep soil = 10% Proposed deep soil = 14% (119.39m ²) Proposed canopy = 21% (173.7 m ²)	Yes
178 Minimum lot size for residential flat buildings or shop top housing		
(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	Proposal is for a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes
(2) A requirement specified in another environmental planning instrument or development control plan in relation to the following does not apply to development that meets the standards in section 180(2) or (3)— (a) minimum lot size, (b) minimum lot width.	Noted	N/A
Division 2 Non-discretionary development standards—the Act, s 4.15		
180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4		
(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	Proposal is for a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes
(3) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing outer area—		
(a) a maximum floor space ratio of 1.5:1,	1.31:1 / 1,087.1sqm	Yes

Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
(b) for residential flat buildings—a maximum building height of 17.5m,	Proposed = 21.41m	No – see discussion at Clause CI4.6

D64/25

Appendix 4: Apartment Design Guide Compliance Table

Clause	Design Criteria	Proposal	Compliance						
Part 1: Identifying the Context									
1B	Loal Character and Context								
	The process of defining the context’s setting and scale has direct implications for design quality of apartments. It establishes the parameters for individual development and how new buildings should respond to and enhance the quality and identity of an area.	Without a context analysis, the Applicant has failed to identify the desired future character of the area and the streetscape.	No						
1C	Precinct and Individual Sites								
	The size, shape and orientation of individual sites directly inform the possible building types and development capacity. The generic building types in section 1A and the primary controls in Part 2 of this guide can assist in testing individual sites to determine the planning controls and supporting guidelines, such as deep soil zones, communal open spaces, privacy, solar access and natural ventilation. Where an area is planned to change, new development needs to address the desired future character at both the neighbourhood and street scales. In established areas new development should carefully respond to neighbouring development.	Without a context analysis, the Applicant has failed to demonstrate that the proposal has appropriately addressed the existing streetscape or desired future characters within both the street scales and the locality.	No						
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 (see figure 3D.3)	Site area = 827.8sqm Min COS = 206.95 Proposed = 35.64sqm Deficient, however generous POS provided to each unit, acceptable	Acceptable						
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	Achieves more than 2 hours from 9am - 11am	Yes						
3E-1	Deep Soil Zone								
	Deep soil zones are to meet the following requirements: Site Area: <table><tr><th>Site Area</th><th>Min. Dimension</th><th>Deep Soil Zone (% site)</th></tr><tr><td>650–1,500m²</td><td>3m</td><td>7%</td></tr></table>	Site Area	Min. Dimension	Deep Soil Zone (% site)	650–1,500m ²	3m	7%	Proposed deep soil = 14% (119.39m ²), with a minimum width of 3m	Yes
Site Area	Min. Dimension	Deep Soil Zone (% site)							
650–1,500m ²	3m	7%							
3F-1	Visual Privacy								
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation	Western side boundary: 3–4 metres on the lower	No, see Key Issues						

D64/25

D64/25

Clause	Design Criteria	Proposal	Compliance												
	distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties	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	levels and 3–3.9 metres on the top level Eastern side boundary: 5 metres on the lower levels and 3.7 metres on the top level	
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													
3G-1	Pedestrian access and entries														
	Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge Entry locations relate to the street and subdivision pattern and the existing pedestrian network Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces. The design of ground floors and underground car parks minimise level changes along pathways and entries. Steps and ramps should be integrated into the overall building and landscape design. For large developments ‘way finding’ maps should be provided to assist visitors and residents (see figure 4T.3). For large developments electronic access and audio/video intercom should be provided to manage access.	The proposed development provides individual ground-floor entries to all ground-floor units from both street frontages, with stair access to the upper-level units. However, there is no communal building entry, and Units 7 and 8 do not have direct lift access from the ground floor. This arrangement results in a convoluted access system, which may reduce functional efficiency, accessibility, and legibility for residents and visitors. The lack of direct lift access for upper-level units and absence of a central communal entry	No, see discussion of Cl6.11 in LEP												

Clause	Design Criteria	Proposal	Compliance
	Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport. Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate.	does not align with best practice residential design principles under the ADG.	
3J-1	Bicycle and Car Parking		
	For sites located within 800m of a light rail stop, 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. The car parking needs for a development must be provided off street	Parking rate (DCP) = 1.5 spaces per 3 or more bedroom apartments = $1.5 \times 8 = 12$ Motorcycle required = $12 \times 0.05 = 1$ Bicycle required = $8/2 + 8/10 = 5$ Parking spaces proposed = 14, including 8 spaces by shuffling car stackers Motorcycle proposed = 1 space Bicycle proposed = 4 spaces Bicycle parking is 1 space deficient, which is supported by Council's Development Engineer.	Acceptable
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid Winter.	Min = 6 of 8 units Proposed = 8 units Nil changes to the approved 6 units	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Top floor units will achieve more than 2 hours.	
4B	Natural Ventilation		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	Min = 5 units Proposed = 8 units	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		
4C	Ceiling Heights		

D64/25

Clause	Design Criteria	Proposal	Compliance						
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: - 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 These minimums do not preclude higher ceilings if desired	Nil changes to the approved 6 units = 2.7m Top floor units = 3.5m, should be reduced to 2.7m to reduce building height	Yes						
4D	Apartment Size and Layout								
	Apartments are required to have the following minimum internal areas: 3 bedroom - 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each	Min proposed 3-bed = 104.7sqm U7 = 146.9sqm U8 = 135.2sqm Complies, however the oversized apartments contribute to the excessive bulk and scale.	Yes						
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Satisfactory	Yes						
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Satisfactory	Yes						
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Satisfactory	Yes						
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Satisfactory	Yes						
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	Min proposed = 3m	Yes						
	Living rooms or combined living/dining rooms have a minimum width of: 4m for 2 and 3 bedroom apartments	Min proposed > 4m	Yes						
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Satisfactory	Yes						
4E	Apartment Size and Layout								
	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m	Dwelling type	Minimum area	Minimum depth	3+ bedroom	12 m ²	2.4m	Sufficiently sized balconies to top floor apartments.	Yes
Dwelling type	Minimum area	Minimum depth							
3+ bedroom	12 m ²	2.4m							

Clause	Design Criteria	Proposal	Compliance
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m	Sufficiently sized terraces to lower floor units.	Yes
4F	Common Circulation and Spaces		
	The maximum number of apartments off a circulation core on a single level is eight	Satisfactory	Yes
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	N/A	N/A
4G	Storage		
	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio apartments - 4m³ • 1 bedroom apartments - 6m³ • 2 bedroom apartments - 8m³ • 3+ bedroom apartments - 10m³ At least 50% of the required storage is to be located within the apartment	Can be accommodated in basement & apartments.	Yes
4K	Apartment Mix		
	A variety of apartment types is provided.	Only 3-bed units provided	No
4L	Ground Floor Apartments		
	Direct access to ground floor apartment. Private open space next to street. Terrace elevated above street level and landscape incorporated. Solar access maximized by high ceilings.	Approved ground floor units with minor changes to configurations	Yes
4O	Landscape Design		
	Appropriate tree and shrub selection based on size at maturity and root systems.	Mostly retained as approved.	Yes
4P	Planting on Structures		
	Soft landscaping incorporated to upper floors to soften built form.	Planter boxes proposed along both balconies on top floor.	Yes

Appendix 5: DCP Compliance Table

1.1. Part B3: Ecologically Sustainable Development

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

1.2. Part B4: Landscaping and Biodiversity

The proposed development meets the landscape requirements in accordance with Section 177(2) of the Housing SEPP and the *Tree Canopy Guide for Low and Mid Rise Housing*, as well as Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at the Appendix 1 of this report.

1.3. Part B5: Preservation of Trees and Vegetation

The proposed development meets the tree preservation requirements in accordance with Part B5 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at the Appendix 1 of this report.

1.4. Part B6: Recycling and Waste Management

The proposed development meets the waste requirements in accordance with Part B6 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer at the Appendix 1 of this report.

1.5. Part B7: Transport, Traffic, Parking and Access

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

1.6. Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (413.9 sqm) is to be landscaped open space.	Proposed = 477.5sqm / 57.7%	Yes
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (206.95sqm) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Proposed deep soil = 14% (119.39m ²), with a minimum width of 3m	No, however complies with the Housing SEPP and ADG
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.	Satisfactory	Yes
	(iii) Deep soil areas are to have soft landscaping comprising a variety of	Satisfactory	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	trees, shrubs and understorey planting.		
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	Satisfactory	Yes
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Satisfactory	Yes
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	POS adjoins living rooms Lower level units POS facing the east U7 POS facing the north U8 POS facing the south – still able to receive sunlight for minimum 2 hours.	Yes
	For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m.	Satisfactory	Yes
2.3.2	Communal open space		
	Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.	Communal open space provided at the rear.	Yes
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	Proposed = 25m, significantly exceed the maximum. Acceptable amenity - most dwelling have dual	No, however acceptable

D64/25

D64/25

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	amenity such as via cross-over, double-height or corner dwellings / units.	aspects and sufficient cross ventilation.	
3.4	Setbacks		
3.4.1	Front setback		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (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.	Consistent with approved DA of 3.9m along Dolphin Street and 6.17m along Heath Street, however not in scale with character of area. Refer to design excellence section for further details.	No
3.4.2	Side setback		
	Residential flat building (i) Comply with the minimum side setback requirements stated below: - 20m and above: 4m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. (iii) A fire protection statement must be submitted where windows are proposed on the external walls of a	Side setbacks, especially the reduced side setbacks on the top level do not recognise the intended scale and streetscape character. In addition, side setbacks do not achieve the ADG required separation distances. Refer to Key Issues section.	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	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.		
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.	N/A Dual Street frontage	N/A
4.	Building Design		
4.1	Building façade		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs.	The proposed development incorporates an extruding top floor that cantilevers beyond the lower levels on all elevations. This design approach results in a visually top-heavy built form that lacks appropriate modulation and fails to break down the overall bulk of the building. The proposal does not achieve a well-proportioned form that responds to the site context or contributes positively to the existing local character. The absence of articulation and the dominant upper level detract from the established streetscape and result in a building that appears inconsistent with the prevailing scale and rhythm of development along Dolphin Street. Refer to design excellence section for further details.	No
4.2	Roof design		
	(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.	Roof form dominate within the local built context.	No

D64/25

D64/25

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape. (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. (vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if: - 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. (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		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	with details shown on a landscape plan.		
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.	Proposed = 14.24m The proposal with its extruding top floor fails to present a human scale or or contributes positively to the existing local character.	No
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Proposed = min 2.7m Proposed U7 & U8 = 3.5m, however contribute to excessive building height	Yes
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Satisfactory	Yes
	(ii) Present new development to the street in the following manner: - 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 (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.	There is no direct entry to top floor units from the street level, except for the fire stairs. Refer to Design Excellence section for further details. Postal services and mailboxes – the proposal does not provide enough details to demonstrate compliance with the requirements.	No

D64/25

D64/25

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.		
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.	Satisfactory	Yes
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.	Satisfactory	Yes
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Satisfactory	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Satisfactory	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Satisfactory	Yes
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary	Satisfactory	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	balconies or terraces in larger apartments.		
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace.	Satisfactory	Yes
4.9	Colours, materials and finishes		
	(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: - 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: - 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.	Consistent with the approved colours, materials and finishes. Refer to Design Excellence section for further details.	Yes
5.	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	Min = 6 Proposed = 8	Yes

D64/25

D64/25

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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.	Satisfactory	Yes
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.	N/A	N/A
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	The proposal will have overshadowing impacts to neighbouring properties resulting from a massing and lack of separation and modulation of the building.	No
	(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.	Refer to detailed assessment in Key Issues section.	
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	Satisfactory	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Satisfactory	Yes
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Satisfactory	Yes
	(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.	Satisfactory	Yes
	(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.	Satisfactory	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	Satisfactory	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	Satisfactory	Yes
5.3	Visual privacy		
	(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection	The lack of separation between the proposed development and its respective side boundaries results in unacceptable visual privacy. Refer to detailed assessment in Key Issues section.	No
5.4	Acoustic privacy		
	(i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: - Double glazing - Operable screened balconies	The lack of separation between the proposed development and its respective side boundaries is likely to result in unacceptable acoustic privacy. An acoustic report was not provided to demonstrate compliance.	No

D64/25

D64/25

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	- Walls to courtyards - Sealing of entry doors		
5.5	View sharing		
	(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.	the subject site and surrounding properties do not enjoy any views of significance.	Yes
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Satisfactory	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	No lobby proposed on the ground floor and top floor units do not have access from the ground floor except for the fire stairs.	No
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Satisfactory	Yes
	(v) Avoid high walls and parking structures around buildings and	Satisfactory	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	open space areas which obstruct views into the development.		
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Satisfactory	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Satisfactory	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Satisfactory	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Satisfactory	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Satisfactory	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Satisfactory	Yes
6. Car parking and access			
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	Location as approved under DA/371/2019 (as modified).	Yes
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.		
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.		
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.		
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage.	Parking provided in basement, with shuffling car stackers. Refer to Appendix 1 for comments from Council's Development Engineer.	Yes

D64/25

D64/25

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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.		

Responsible officer: Ivy Zhang, Senior Environmental Planning Officer

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