
Randwick Local Planning Panel (Electronic) Meeting

Thursday 12 February 2026



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC) MEETING

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Team on Thursday, 12 February 2026 at 1pm

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D1/26

Subject: 4-4A Burke Street, Chifley (DA/1192/2025)

Executive Summary

Proposal: Torrens title subdivision of attached dual occupancy to create two (2) Torrens title lots and semi-detached dwellings (Variation to Minimum Lot Size).

Ward: South Ward

Applicant: Despina Ghattas

Owner: 4 Burke Street Chifley Pty Ltd

Cost of works: Nil

Reason for referral: The development contravenes the development standard for lot size by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the applicant's written requests to vary the development standard relating to Minimum subdivision lot size in Clauses 4.1 of Randwick Local Environmental Plan 2012 has demonstrated that:
 - i. Compliance with the relevant development standard is unreasonable or unnecessary in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standard.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1192/2025 for Torrens title subdivision of attached dual occupancy to create two (2) Torrens title lots and semi-detached dwellings (Variation to Minimum Lot Size), at No. 4-4A Burke Street CHIFLEY NSW 2036, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/1192/2025 – 4-4A Burke Street, Chifley - DEV - Randwick City Council

D1/26

D1/26



1. Executive summary

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

The proposal seeks development consent for Torrens title subdivision of an existing attached dual occupancy to create two (2) Torrens title lots and semi-detached dwellings.

The existing attached dual occupancy was approved under DA/747/2015 on 29 December 2015 and DA/747/2015/A on 22 November 2017.

Council has endorsed an interim policy position at its Ordinary Meeting on 23 September 2025 (Report No. CP24/25) to support the subdivision of approved dual occupancies on lots between 450m² and 550m², provided that the development was approved prior to 1 September 2023 and the site is not within a heritage area.

The key issues associated with the proposal relate to the Clause 4.6 for lot size variation, the DCP objectives, as well as consideration of the Council's interim policy.

The proposal is recommended for approval.

2. Site Description and Locality

The subject site is known as No. 4-4A Burke Street Chifley NSW 2036 and is legally described as Lot 3556 in DP 752015. The site is 461.6m², is irregular in shape and has a 15.24m frontage located on the north-west of Burke Street. It has an eastern side boundary of 35.28m and a western side boundary of 25.995m and a rear boundary of 17.845m (based on the survey plan in Council TRIM No. P00159191).

The subject site currently contains a 2-storey attached dual occupancy.



Figure 1: Front view of subject site showing dwelling house (Source: Council's Assessing Officer)

The surrounding area is characterised by low residential development. The development pattern is predominantly made up of single to 2-storey buildings (such as dwelling houses and semi-detached dwellings).

3. Relevant history

DA/747/2015 was approved on 29 December 2015 for demolition of existing dwelling house and construction of a new two storey attached dual occupancy.

DA/747/2015/A was approved on 22 November 2017 for Section 96 modification of the approved development by altering the stormwater design with inclusion of OSD tank. Original consent: Demolition of existing dwelling house and construction of a new two storey attached dual occupancy.

23 September 2025

At its Ordinary Council Meeting on 23 September 2025, Council resolved the following:

RESOLUTION: (Gordon/Asgari) that Council:

a) support an amendment to Randwick Local Environmental Plan 2012 (RLEP) to enable Torrens or strata subdivision of approved attached dual occupancies in the R2 zone on lots between 450m² and 550m², provided the approval was granted before 1 September 2023 and the site is not within a Heritage Conservation Areas;

b) endorse the preparation of a planning proposal to amend the Randwick Local Environmental Plan 2012 to allow the Torrens and strata subdivision of approved dual occupancies on lots between 450m²-550m² (for those approvals granted before 1 September 2023); and

c) adopt an interim policy position allowing Council to consider and approve variation to the development standard relating to minimum subdivision lot size for affected attached dual occupancies in the R2 zone, until an amendment to the Randwick Local Environmental Plan 2012 is gazetted.

4. Proposal

The proposal seeks development consent for Torrens title subdivision of attached dual occupancy to create two (2) Torrens title lots and semi-detached dwellings.

Proposed Torrens title subdivision consists:

Lot 1 (north-east) with a street frontage of 7.62m and an area of 250.7sqm.

Lot 2 (south-west) with a street frontage of 7.62m and an area of 215.8sqm.

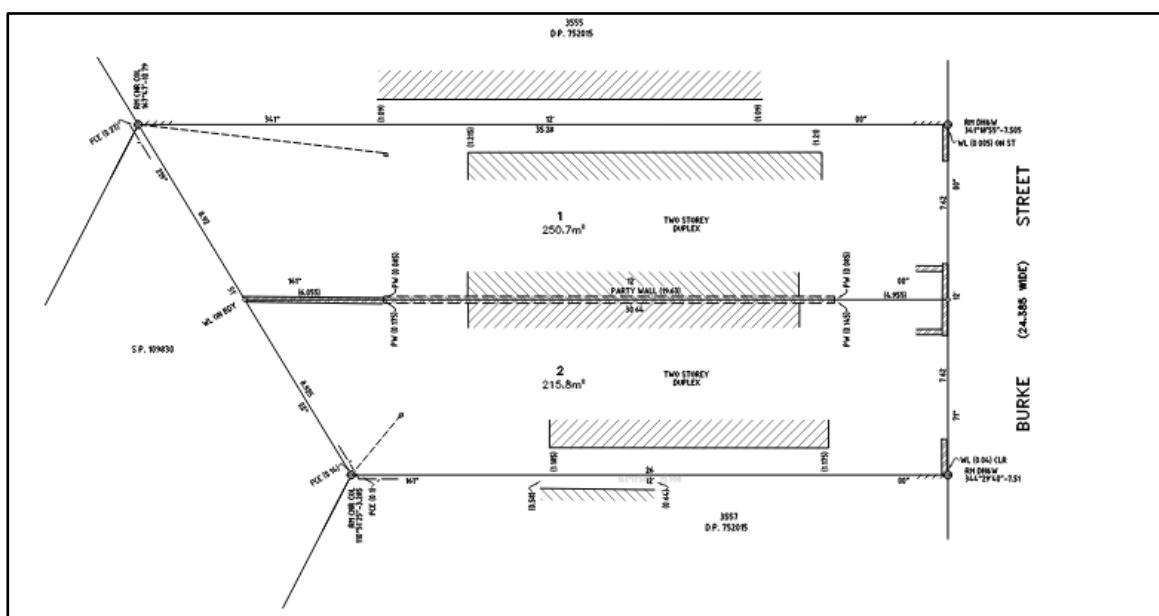


Figure 2: Extracted from Plan of Subdivision (Source: *ISMAT HABBOUCHI*)

5. Notification

At the discretion of the Director City Planning, notification of the subject application was waived and no notification was required for proposed Torren title Subdivision. No submissions were received during the assessment of the application.

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

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

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form complies with the objectives of the zone as outlined in the Clause 4.6 Variation request.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.1: Lot Size (min)	275sqm	Lot 1 (north-east) 250.7sqm. Lot 2 (south-west) 215.8sqm.	No

6.1.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.1: Lot Size (min)	275sqm	Lot 1 (north-east) 250.7sqm. Lot 2 (south-west) 215.8sqm.	Lot 1 (north-east) 24.3sqm. Lot 2 (south-west) 59.2sqm.	8.84% 21.5%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Minimum Lot Size development standard (CI 4.1)

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

- 1. Has the applicant's written request adequately 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 minimum lot size development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

The objectives of the Minimum Lot Size standard are set out in Clause 4.1(1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

(a) *to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,*

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

The proposed subdivision will not alter the existing dwellings on the site. Therefore, the proposed lot sizes and subdivision will not impact the amenity of neighbouring properties in terms of overshadowing, privacy and view loss.

The effect of the subdivision would be indiscernible from the approved development, which has two dwellings with two front doors, two letterboxes, two driveways and is fenced in between. The dwellings would appear as two separate and divided dwellings when viewed from Burke Street and the surrounding properties.

On this basis, the variation to the lot size control would not cause any conflict with the objective.

(b) *to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,*

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

Despite the non-compliant lot sizes, the proposed subdivision will not result in any unreasonable impacts on natural or cultural features.

The site does not contain any natural features nor any heritage-listed items, and is not adjacent to any heritage items. The subdivision is sought for a standard urban allotment which is comparable to numerous attached dual occupancies in Chifley and adjoining suburbs.

Furthermore, no views or trees are affected by the proposed subdivision.

On this basis, the variation to the lot size control would not cause any conflict with the objective.

(c) *to ensure that lot sizes are able to accommodate development that is suitable for its purpose.*

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

The proposed subdivision is considered suitable for the existing dual occupancy which has been designed to operate and function independently of each other.

The departures from the lot size control do not compromise the existing dwellings' ability to meet or outperform the requirements of the LEP and DCP controls for building height, FSR, site coverage, landscaping, private open space, wall height, front, side, and rear setbacks, car parking, and solar access.

The proposed subdivision will not alter the existing dwellings on the site. Therefore, the internal amenity of the existing dwellings is not compromised by the proposed lot sizes, and the proposed subdivision will not impact the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss.

On this basis, the variation to the lot size control would not cause any conflict with the objective.

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

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

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

There are sufficient environmental planning grounds that demonstrate that the proposed lot sizes can be achieved without adverse impacts for the following reasons:

- *The proposed subdivision would be in conformity with the Council resolution of 23 September 2025, as outlined above. Such a factor is considered to constitute a sufficient environmental ground.*
- *The proposed subdivision will not alter the existing dwellings' bulk, scale or appearance and will, therefore, not alter the streetscape or character of the area.*
- *The proposed subdivision and lot sizes are considered suitable for the existing dual occupancy, which has been designed to operate and function independently of each other.*
- *The shortfall of lot areas will be indiscernible from the public domain. The existing un-subdivided dual occupancy on the subject site would appear no different to the casual observer than the proposed subdivision.*
- *The departure to the lot size control does not compromise the ability of the existing dwellings to meet or outperform the requirements of the LEP and DCP controls for building height, FSR, site coverage, landscaping, private open space, wall height, front and side and rear setbacks, car parking and solar access.*
- *The proposed subdivision will not alter the existing dwellings on the site. Therefore, the internal amenity of the existing dwellings is not compromised by the proposed lot sizes, and the proposed subdivision will not impact the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss.*
- *The proposal is consistent with the R2 Low-Density Residential Zone objectives and the lot size objectives.*
- *The proposed subdivision represents an orderly and economic use of the site, which is identified as an object of the Act (Section 1.3 of the EP&A Act, 1979).*

Assessing officer's comment:

Council has endorsed an interim policy position at its Ordinary Meeting on 23 September 2025 (Report No. CP24/25).

This policy supports the subdivision of approved dual occupancies on lots between 450m² and 550m², provided that the development was approved prior to 01 September 2023 and the site is not within a heritage area. It is noted the proposed built form is existing and not located within a conservation area and will generally align with the interim policy adopted by Council in support of the proposed variation.

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the minimum lot size development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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

Housing and Productivity Contribution

The Housing and Productivity Contribution (HPC) came into effect on 1 October 2023 by way of Ministerial Planning Order the *“Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023”*, under section 1.4 of the EP&A Act.

The HPC are intended to capture an intensification of use. The 2024 HPC Ministerial Order captures Torrens title subdivision; however, regarding **medium density residential development**, such as dual occupancies, the HPC generally captures development at the construction stage (rather than the subdivision stage as under the 2023 HPC Order). Given that the proposal does not involve any construction, there is no need to look at how HPC units of charge are calculated for the construction of medium density residential development.

The 2024 Order contains the following regarding calculating HPC units of charge for residential subdivision:

12 Calculation of HPC units for residential subdivision

- (1) The number of new dwelling lots for residential subdivision is the number of lots authorised by the development consent, less—
 - (a) the number of existing potential dwelling lots, and
 - (b) the number of excluded lots.

Note. Residential subdivision does not include strata subdivision of residential accommodation.
- (2) An ***existing potential dwelling lot*** is a lot—
 - (a) that exists when the development application for the HPC development is made, and
 - (b) on which residential accommodation is permitted with development consent by an environmental planning instrument applying to the land when the development consent is granted.
- (3) A proposed lot is an ***excluded lot*** if—
 - (a) it is shown on the proposed plan of subdivision as intended to be dedicated for a public purpose such as a public road, public reserve or drainage reserve, or
 - (b) the development consent authorises only the carrying out of development for a purpose other than residential accommodation on the proposed lot, or
 - (c) the development consent authorises medium or high-density residential development on the proposed lot, or
 - (d) there is medium or high-density residential accommodation on the proposed lot when the development application is made and the development consent does not authorise its demolition, or
 - (e) there is an existing building on the proposed lot that—
 - (i) is used for a purpose other than residential accommodation, and
 - (ii) is not authorised to be demolished by the development consent, or
 - (f) it is association property within the meaning of the *Community Land Development Act 2021*, or
 - (g) it is only created for the purpose of rectifying an encroachment on an existing lot.
- (4) For the purposes of subclause (3)(d) it does not matter if, as a result of the proposed subdivision, the residential accommodation existing on the land will no longer be medium or high-density accommodation.

In this case the calculations for residential subdivision are likely to be based on Clause 12 subclause (1), (2), and (3):

- (1) The number of new dwelling lots for residential subdivision is the number of lots authorised by the development consent, less—
 - (a) the number of existing potential dwelling lots, and
 - (b) the number of excluded lots.

Note. Residential subdivision does not include strata subdivision of residential accommodation.

Therefore, the number of lots authorised would likely be two, minus any existing potential dwelling lots and excluded lots:

- (2) An ***existing potential dwelling lot*** is a lot—
 - (a) that exists when the development application for the HPC development is made, and
 - (b) on which residential accommodation is permitted with development consent by an environmental planning instrument applying to the land when the development consent is granted.

(3) A proposed lot is an **excluded lot** if—

- (a) it is shown on the proposed plan of subdivision as intended to be dedicated for a public purpose such as a public road, public reserve or drainage reserve, or
- (b) the development consent authorises only the carrying out of development for a purpose other than residential accommodation on the proposed lot, or
- (c) the development consent authorises medium or high-density residential development on the proposed lot, or
- (d) **there is medium or high-density residential accommodation on the proposed lot when the development application is made and the development consent does not authorise its demolition, or**
- (e) there is an existing building on the proposed lot that—
 - (i) is used for a purpose other than residential accommodation, and
 - (ii) is not authorised to be demolished by the development consent, or
- (f) it is association property within the meaning of the *Community Land Development Act 2021*, or
- (g) it is only created for the purpose of rectifying an encroachment on an existing lot.

Based on the above, the two (2) HPC units of charge would be reduced by one (1) existing potential dwelling lot and one (1) excluded lot – resulting in no HPC units of charge for the proposed Torrens title subdivision. As such, the HPC is not applicable to the proposed subdivision.

9. Environmental Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
economic impacts in the locality	The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The application was not notified.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Section 2.2 of the Low Density Residential DCP (Part C1) contains the lot frontage width controls and objectives for dual occupancy development.

Section 2.2(ii) states that the parent lot should be 15m, with a resultant minimum lot width of 7.5m per lot.

The objectives are:

- *To ensure land subdivision respects the predominant existing or planned future subdivision and development pattern of the locality*
- *To ensure land subdivision creates allotments that have adequate width and configuration, to deliver suitable building design and to maintain the amenity of the neighbouring properties*
- *To ensure dwellings have suitable scale and built form proportional to their allotment to complement the streetscape*
- *To ensure dual occupancy dwellings do not result in unreasonable impacts on the surrounding properties in terms of visual amenity, solar access and privacy.*

The site has a frontage width of more than 15m. The built form was already considered and approved under DA/747/2015, the approved lot frontages of each dwelling are greater than 7.5m, being 7.62m.

The proposal is consistent with the objectives listed above.

10. Conclusion

That the application to Torrens Title subdivision be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 Low Density Residential zone in that:
 - It provides for the housing needs of the community.
 - There are no changes to the approved built form.
 - The proposal will not worsen housing affordability.

- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

General Comments

There are no objections to the proposal subject to the comments and conditions provided in this report.

The dual occupancy development was approved under DA/747/2015/A and CC/180/2016/A. A final occupation certificate was issued on 16/9/2018.

Appendix 2: Applicant's written request seeking to justify the contravention of the development standardClause 4.6 (Lot Size Variation)

4-4A Burke Street, Chifley

**CLAUSE 4.6 VARIATION REQUEST TO MINIMUM SUBDIVISION LOT SIZE STANDARD
PURSUANT TO CLAUSE 4.1 OF RANDWICK LEP 2012****4-4A Burke Street, CHIFLEY***Torrens title subdivision of an existing dual occupancy into two lots*

PREPARED BY

ABC PLANNING PTY LTD

OCTOBER 2025

Clause 4.6 (Lot Size Variation)4-4A Burke Street, Chifley**RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 variation request has been prepared to accompany the development application for Torrens title subdivision of an existing dual occupancy into two lots at 4-4A Burke St, Chifley.

Clause 4.6 of the Randwick LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide appropriate flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

It is noted in particular that in the SJD decision, the Court at [73] held that "it should be noted cl 4.6 of [LEP] is as much a part of [LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome."

Clause 4.6 is reproduced in full immediately below, and each aspect of the clause is addressed in this written request.

Clause 4.6 Exceptions to development standards

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

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

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

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

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

Note—

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

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

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

Clause 4.6 (Lot Size Variation)

4-4A Burke Street, Chifley

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

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

(c) clause 5.4,

(cae) clause 5.5,

(ca) clause 6.27(4),

(cb), (cc) (Repealed)

(cd) clause 6.31.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.1 of the Randwick LEP 2012 and the associated lot size map below.



Figure 1: Minimum Lot Size Map

Clause 4.1 of Randwick LEP 2012 prescribes a minimum subdivision lot size of 275m². The proposed Torrens title subdivision of the existing dual occupancy will result in the following lot sizes:

- 4 Burke Street (lot 1): 215.6m²
- 4A Burke Street (lot 2): 250.9m²

Clause 4.6 (Lot Size Variation)4-4A Burke Street, Chifley

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

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

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.27(4),

(cb), (cc) (Repealed)

(cd) clause 6.31.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.1 of the Randwick LEP 2012 and the associated lot size map below.



Figure 1: Minimum Lot Size Map

Clause 4.1 of Randwick LEP 2012 prescribes a minimum subdivision lot size of 275m². The proposed Torrens title subdivision of the existing dual occupancy will result in the following lot sizes:

- 4 Burke Street (lot 1): 215.6m²
- 4A Burke Street (lot 2): 250.9m²

Clause 4.6 (Lot Size Variation)

4-4A Burke Street, Chifley

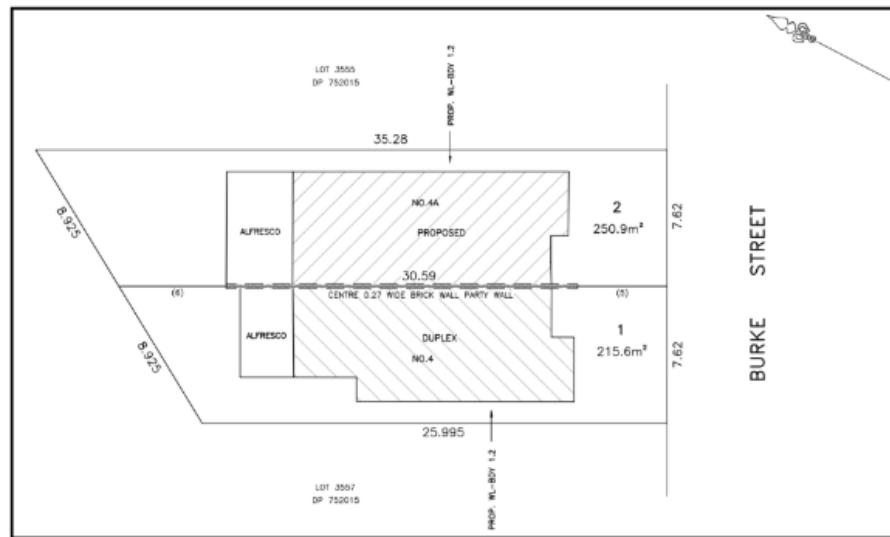


Figure 2: Excerpt of the proposed Torrens title subdivision plan of Lots 1 and 2

The proposed lot areas do not comply with the Randwick LEP 2012 minimum lot size development standard, representing the following variation from the numerical lot size development standard in the LEP:

- 4 Burke Street (lot 1): 59.4sqm (21.6%)
- 4A Burke Street (lot 2): 24.1sqm variation (8.76%)

Justification for Contravention of the Development Standard

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

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

- Torrens title subdivision would be consistent with the Council Resolution of 23 September 2025, which resolved to prepare a planning proposal to amend RLEP to permit subdivision of existing or approved dual occupancies on parent lots between 450-550sqm that were approved prior to 1 September 2023 (gazettal date of Amendment No.9 of RLEP). The existing dual occupancy has a parent lot of 466.5sqm and was approved on 29 December 2015, thereby satisfying the criteria from the Council Resolution. The resolution also stated that Council adopt an interim policy position allowing Council to consider and approve variations to the development standard relating to minimum subdivision lot size for affected attached dual occupancies in the R2 zone, until an amendment to the Randwick Local Environmental Plan 2012 is gazetted. Given the

Clause 4.6 (Lot Size Variation)4-4A Burke Street, Chifley

above, enforcement of the minimum lot size would be both unreasonable and unnecessary in such circumstances.

- The existing un-subdivided dual occupancy on the subject site would appear no different to the casual observer than the proposed subdivided dual occupancy. The proposed subdivision will not alter the existing dwellings' bulk, scale or appearance. The lot size variation will, therefore, be indiscernible from the public domain. The following photos include the subject dual occupancy and other dual occupancies previously approved for subdivision at 3 Burke Street and 11 Burke Street. The lot size variation would be indiscernible when observing both dual occupancies in the streetscape and when viewed from surrounding properties. The subject building appears no different from subdivided dual occupancies.



Figure 3: Subject dual occupancy sought to be subdivided at 4 Burke Street

Clause 4.6 (Lot Size Variation)4-4A Burke Street, Chifley

Figure 4: Attached dual occupancy at 3 and 3A Burke Street, previously approved for Torrens title subdivision



Figure 5: Attached dual occupancy at 11 Burke Street, previously approved for Strata title subdivision

- The proposal represents a more orderly and viable outcome with Torrens title subdivision and unfettered lots, which is preferred over strata or company title of dual occupancy or no subdivision.

- The proposed subdivision and lot sizes are considered suitable for the existing dual occupancy, designed to operate and function independently of each other.
- The departure from the lot size control does not compromise the ability of the existing dwellings to meet or outperform the requirements of the LEP and DCP controls for building height, FSR, site coverage, landscaping, private open space, wall height, front, side and rear setbacks, car parking and solar access.
- The proposed subdivision will not alter the existing dwellings on the site. Therefore, the internal amenity of the existing dwellings is not compromised by the proposed lot sizes, and the proposed subdivision will not impact the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss.
- Despite the proposed lots being under the minimum lot size, it has been demonstrated that the site can accommodate the existing dwellings. The proposed subdivision will not alter the streetscape or character of the area.
- Despite the non-compliance with the lot size control, the proposal achieves the objectives of the lot size development standard and the R2 zoning.

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

Consistency with the Objectives of the Lot Size Development Standard in the LEP	
Objectives	Assessment
<i>(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,</i>	<p>The proposed subdivision will not alter the existing dwellings on the site. Therefore, the proposed lot sizes and subdivision will not impact the amenity of neighbouring properties in terms of overshadowing, privacy and view loss.</p> <p>The effect of the subdivision would be indiscernible from the approved development, which has two dwellings with two front doors, two letterboxes, two driveways and is fenced in between. The dwellings would appear as two separate and divided dwellings when viewed from Burke Street and the surrounding properties.</p> <p>On this basis, the variation to the lot size control would not cause any conflict with the objective.</p>
<i>(b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,</i>	<p>Despite the non-compliant lot sizes, the proposed subdivision will not result in any unreasonable impacts on natural or cultural features.</p> <p>The site does not contain any natural features nor any heritage-listed items, and is not adjacent to any heritage items. The subdivision is sought for a standard urban allotment which is comparable to numerous attached dual occupancies in Chifley and adjoining suburbs.</p>

		Furthermore, no views or trees are affected by the proposed subdivision. On this basis, the variation to the lot size control would not cause any conflict with the objective.
<i>(c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.</i>		<p>The proposed subdivision is considered suitable for the existing dual occupancy which has been designed to operate and function independently of each other.</p> <p>The departures from the lot size control do not compromise the existing dwellings' ability to meet or outperform the requirements of the LEP and DCP controls for building height, FSR, site coverage, landscaping, private open space, wall height, front, side, and rear setbacks, car parking, and solar access.</p> <p>The proposed subdivision will not alter the existing dwellings on the site. Therefore, the internal amenity of the existing dwellings is not compromised by the proposed lot sizes, and the proposed subdivision will not impact the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss.</p> <p>On this basis, the variation to the lot size control would not cause any conflict with the objective.</p>
Consistency with the Objectives of the R2 Low-Density Zone		
Objectives	Assessment	
<ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a low-density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>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.</i> <i>To protect the amenity of residents.</i> <i>To encourage housing affordability.</i> <i>To enable small-scale business uses in existing commercial buildings.</i> 	<p>The proposed Torrens title subdivision of the existing dual occupancy is permissible within the R2 Low-Density Residential zone.</p> <p>The proposed lot size variation does not raise any inconsistency with the proposal's ability to achieve the objectives of the R2 Low-Density Residential zone.</p> <p>The proposal aligns with the zone's objectives by continuing to provide for the community's housing needs within a low-density residential environment.</p> <p>The proposed subdivision will not alter the existing dwellings on the site and will, therefore, not have an adverse amenity impact on the existing dwellings, surrounding properties or streetscape along both sides of Burke Street.</p> <p>The proposed subdivision is considered suitable for the existing dual occupancy designed to operate and function independently of each other.</p> <p>The proposal will not inhibit other land uses to be provided in the area that provides facilities or services to meet the day-to-day needs of residents.</p>	

Clause 4.6 (Lot Size Variation)4-4A Burke Street, Chifley

	Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the minor height variation.
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Based on the above assessment, strict compliance with the LEP lot size standard is considered unreasonable and unnecessary in this instance.

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

Assessment: There are sufficient environmental planning grounds that demonstrate that the proposed lot sizes can be achieved without adverse impacts for the following reasons:

- The proposed subdivision would be in conformity with the Council resolution of 23 September 2025, as outlined above. Such a factor is considered to constitute a sufficient environmental ground.
- The proposed subdivision will not alter the existing dwellings' bulk, scale or appearance and will, therefore, not alter the streetscape or character of the area.
- The proposed subdivision and lot sizes are considered suitable for the existing dual occupancy, which has been designed to operate and function independently of each other.
- The shortfall of lot areas will be indiscernible from the public domain. The existing un-subdivided dual occupancy on the subject site would appear no different to the casual observer than the proposed subdivision.
- The departure to the lot size control does not compromise the ability of the existing dwellings to meet or outperform the requirements of the LEP and DCP controls for building height, FSR, site coverage, landscaping, private open space, wall height, front and side and rear setbacks, car parking and solar access.
- The proposed subdivision will not alter the existing dwellings on the site. Therefore, the internal amenity of the existing dwellings is not compromised by the proposed lot sizes, and the proposed subdivision will not impact the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss.
- The proposal is consistent with the R2 Low-Density Residential Zone objectives and the lot size objectives.
- The proposed subdivision represents an orderly and economic use of the site, which is identified as an object of the Act (Section 1.3 of the EP&A Act, 1979).

Based on the above, there are sufficient environmental grounds to permit the lot size variations in this instance.

*Clause 4.6 (Lot Size Variation)**4-4A Burke Street, Chifley***D1/26****Conclusion**

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

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the proposed subdivision at 4-4A Burke St Chifley. The consent authority is requested to look upon it favourably.

Appendix 3: DCP Compliance Table**3.1 Part C1: Low Density Residential (dated 27 June 2023)**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)																				
	Classification	Zoning = R2																					
2	Site planning																						
2.1	Minimum lot size																						
	Minimum lot size LEP 2012 = 275m²	Lot 1 (north-east) 250.7sqm. Lot 2 (south-west) 215.8sqm.	No, refer to section 7																				
2.2	Lot Frontage																						
	<p>i) The minimum frontage widths for subdivision of lots must meet the following:</p> <table border="1"> <thead> <tr> <th colspan="4">Minimum lot primary street frontage widths for subdivision</th> </tr> <tr> <th>Low density housing type</th> <th>Zone</th> <th>Parent lot</th> <th>Resulting lot following subdivision</th> </tr> </thead> <tbody> <tr> <td>Dwelling houses</td> <td>R2</td> <td>24m</td> <td>12m per dwelling</td> </tr> <tr> <td>Dwelling houses</td> <td>R3</td> <td>18m</td> <td>9m per dwelling</td> </tr> <tr> <td>Semi-detached dwellings</td> <td>R2, R3 and where permissible</td> <td>15m</td> <td>7.5m per dwelling</td> </tr> </tbody> </table> <p>iii) Any subdivision of land must not create battle-axe or hatchet shaped allotments for the purposes of dwelling houses, semi-detached dwellings or dual occupancies (attached).</p>	Minimum lot primary street frontage widths for subdivision				Low density housing type	Zone	Parent lot	Resulting lot following subdivision	Dwelling houses	R2	24m	12m per dwelling	Dwelling houses	R3	18m	9m per dwelling	Semi-detached dwellings	R2, R3 and where permissible	15m	7.5m per dwelling	<p>Approx minimum frontage of Lot 1 and 2 = 7.62m</p> <p>The proposed subdivision does not create battle-axe or hatchet shaped allotments</p>	Yes
Minimum lot primary street frontage widths for subdivision																							
Low density housing type	Zone	Parent lot	Resulting lot following subdivision																				
Dwelling houses	R2	24m	12m per dwelling																				
Dwelling houses	R3	18m	9m per dwelling																				
Semi-detached dwellings	R2, R3 and where permissible	15m	7.5m per dwelling																				

Responsible officer: Mia Liu, Environmental Planning Officer

File Reference: DA/1192/2025

Draft Development Consent Conditions
– Torrens Title Subdivision of Existing Semi-detached dwellings



Folder / DA No:	DA/1192/2025
Property:	4-4A Burke Street, CHIFLEY NSW 2036
Proposal:	Torrens title subdivision of attached dual occupancy to create two (2) Torrens title lots and semi-detached dwellings (Variation to Minimum Lot Size).
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1. **Approved plans and documentation**

Development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent (including any deferred commencement conditions):

Plan	Drawn by	Dated	Received by Council
Plan of Subdivision of Lot 3556 in DP 752015 Sheet 1 of 2 sheet (s)	SIMAT HABBOUCHI	9 October 2025	14 November 2025
Plan of Subdivision of Lot 3556 in DP 752015 Sheet 2 of 2 sheet (s)	SIMAT HABBOUCHI	9 October 2025	14 November 2025

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

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

LAND SUBDIVISION

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Condition

2. **Sydney Water**

A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about

Condition
applying through an authorised WSC or Sydney Water.

A Section 73 Compliance Certificate must be completed before a subdivision certificate will be issued.

NOTE: The S73 compliance certificate issued under the construction approval (DA/747/2015/A) will not be sufficient to satisfy this condition. A new Section 73 certificate must be obtained that refers to the subdivision of the property approved under this consent.

Condition reason: To ensure the development satisfies Sydney Water requirements with regards to any upgrade/adjustment of Sydney Water's assets.

3. **Easements**

The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres.

Condition Reason: To ensure all necessary easements are created.

4. **Public Utilities**

The applicant must meet the full cost for telecommunication companies, Jemena, Ausgrid and Sydney Water to adjust/relocate their services as required. This may include (but not necessarily be limited to) relocating/installing new service lines and providing new meters. The applicant must make the necessary arrangements with the service authorities.

Should compliance with this condition require works that are not exempt development, the necessary approvals must be obtained prior to any works being undertaken.

Condition reason: To ensure relevant utility and service providers' requirements have been complied with.

5. **Road / Asset Opening Permit**

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

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

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

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

or ring the call centre on 1300 722 542

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

6. **Street and/or Sub-Address Numbering**

Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

An application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street

Condition
and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of a subdivision certificate.
Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.
Condition reason: To ensure street numbering is provided in accordance with Councils requirements.
<p>7. Restriction and Positive Covenant A computer folio search and/or receipt from NSW Land Registry Services providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition 53 of DA/747/2015) shall be provided to Council prior to the issuing of a subdivision certificate.</p> <p>If the restriction and positive covenant have not yet been registered, a "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of subdivision for this property, to ensure that the onsite detention system is maintained and that no works which could affect the design function of the detention system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.</p> <p>Notes:</p> <ul style="list-style-type: none">a. The "restriction as to user" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.b. The works as executed drainage plan and hydraulic certification (demonstrating compliance with development consent requirements and conditions) must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council. <p>Condition reason: To ensure stormwater run-off is effectively managed for the two lots for the life of the development.</p>
<p>8. Subdivision Certificate A formal application for a subdivision certificate is required to be submitted to and approved by the Council and all conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.</p> <p>Condition Reason: To ensure the completed subdivision complies with the conditions of consent.</p>

Development Application Report No. D2/26

Subject: 37 Beach Street, Clovelly (DA/138/2025/B)

Executive Summary

Proposal:	Section 4.55(2) Modification to the approved development including mirroring of the fire stair, enlargement of the basement and lowering of the basement finished floor level, addition of 2 parking spaces, internal amendments to units, amendments to window sizes/locations, first floor rear balcony extension, provision of new skylights, changes to first floor front façade, hydrant booster re-location, amendments to tree management plan, driveway extension to the lower level and extension of side awning.
Ward:	North Ward
Applicant:	Rob Meyerson
Owner:	Pollyco Development Pty Ltd
Cost of works:	\$3,886,354
Reason for referral:	This Modification is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Act and proposes amendments to a condition of development consent recommended in the Council assessment report but which was amended by the RLPP.

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/138/2025 for *Section 4.55(2) Modification to the approved development including mirroring of the fire stair, enlargement of the basement and lowering of the basement finished floor level, addition of 2 parking spaces, internal amendments to units, amendments to window sizes/locations, first floor rear balcony extension, provision of new skylights, changes to first floor front façade, hydrant booster re-location, amendments to tree management plan, driveway extension to the lower level and extension of side awning*, at No. 37 Beach Street, Clovelly, in the following manner:

- Amend Condition 1 to read:**

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

Plan	Drawn by	Dated	Received by Council
Site Plan DA100 [04]	Common Office	05/11/2025	19/01/2026
Basement Plan DA200 [05]	Common Office	19/01/2026	19/01/2026
Ground Floor Plan DA201 [04]	Common Office	05/11/2025	19/01/2026
First Floor Plan DA202 [04]	Common Office	05/11/2025	19/01/2026
Second Floor Plan DA203 [04]	Common Office	05/11/2025	19/01/2026
Roof Plan DA204 [04]	Common Office	05/11/2025	19/01/2026
Driveway Plan DA205 [04]	Common Office	05/11/2025	19/01/2026
Second Plan RCP [04]	Common Office	05/11/2025	19/01/2026
West Elevation DA300 [04]	Common Office	05/11/2025	19/01/2026
East Elevation DA301 [04]	Common Office	05/11/2025	19/01/2026
North Elevation DA302 [04]	Common Office	05/11/2025	19/01/2026

D2/26

D2/26

South Elevation DA303 [04]	Common Office	05/11/2025	19/01/2026
Long Section DA400 [05]	Common Office	19/01/2026	19/01/2026
Short Section DA401 [05]	Common Office	19/01/2026	19/01/2026
Short Section Sketches DA402 [05]	Common Office	19/01/2026	19/01/2026
Materials Schedule DA504 [04]	Common Office	05/11/2025	19/01/2026
Window Schedule – Ground DA600 [04]	Common Office	05/11/2025	19/01/2026
Window Schedule – First DA601 [04]	Common Office	05/11/2025	19/01/2026
Window Schedule – Second & Roof DA602 [04]	Common Office	05/11/2025	19/01/2026

BASIX Certificate No.	Dated	Received by Council
1819001M	27 October 2025	14 November 2025

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

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

(Condition amended – 26/06/2025 – DA/138/2025/A – PAN-546839)
 (Condition amended – 12/02/2026 – DA/138/2025/B – PAN-588409)

- **Amend Condition 2 to read:**

The Architectural Drawings approved under Condition 1 must be amended as follows. Amended documents must be provided to and approved by Council's Manager Development Assessment prior to the issue of a construction certificate.

- Amend all relevant architectural drawings to increase the ceiling height of second floor unit's living/dining/kitchen area up to a continuous 2700mm. RL 45.49 may not increase by more than 300mm.

The resulting roof form adjoining the southern elevation of the second floor unit living/dining/kitchen area must incorporate a mansard style roof.

- Laundry facilities are to be reintroduced to the empty space directly south of the lift area on the first floor plan.

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

(Condition amended – 12/02/2026 – DA/138/2025/B – PAN-588409)

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/138/2025/B - 37 Beach Street, CLOVELLY NSW 2031 - DEV - Common Office



1. The Modification

This report will assess DA/138/2025/B (*the Modification*) for 37 Beach Street, Clovelly (*the Subject Site*) against the relevant heads of consideration under Section 4.55 of *Environmental Planning and Assessment Act 1979* (*the Act*).

This Modification is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Act and seeks to modify a condition which was previously amended and approved by the RLPP.

DA/138/2025 was originally referred to the RLPP because it contravened the development standard for floor space ratio by more than 10%

Condition 1 was proposed to the RLPP as follows.

GENERAL CONDITIONS

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Figure 1 – DA/138/2025 – proposed conditions. (D05729070 in TRIM)

- Amend condition 1 to read as follows:

Approved plans and documentation

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

Plan	Drawn by	Dated	Received by Council
Site Plan DA100 [01]	Common Office	29/05/2025	30/05/2025
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Note: equally applicable to plans referenced above.

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

Figure 2 – RLPP Action Item – 12/06/2025 – Condition 1 amendment.

Condition 1 was amended by the RLPP to read as above in **Figure 2** (difference highlighted). Accordingly, the Application must be referred back to the RLPP for determination.

2. Site Description and Locality

The Subject Site is zoned R2, being located at 37 Beach Street, Clovelly. It is legally identified as Lot 1 in Deposited Plan 721642 (beings Lots 1-4 in Strata Plan 45039). By survey the Subject Site measures 445.8sqm, addressing Beach Street through a 12.19 metre frontage.

The Subject Site is regular in shape and is improved by an existing two storey RFB, readily identifiable through its brick exterior and building design signature to 1960's style RFB found across the Randwick Local Government Area.

Surrounding development consists of a mix of low and medium density dwellings, with three RFBs being located opposite the Subject Site on Beach Street. Supporting commercial uses are located approximately 70 metres north of the Subject Site along Clovelly Road.

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3. Details of Current Approval

BA/743/1964 was determined circa 1964 and approved the construction of the existing RFB.

DA/155/1991 was determined circa 1991 for strata subdivision of the existing RFB into four separate lots.

DA/138/2025 was determined on 12 June 2025 by the RLPP. It approved “*demolition of existing buildings, tree removal and construction of a 3-storey residential flat building with basement level containing three (3) residential apartments, four (4) car parking spaces, installation of a swimming pool for the ground floor apartment, new front fencing and detached awning, associated ancillary and landscaping works (Variation to Floor Space Ratio Development Standard)*”.

DA/138/2025/A was determined on 26 June 2025 by Council. It approved modification to condition 1 to correct an administrative error.

3.1 Revisions to the Modification

The Modification was amended through agreement between Council and the Applicant during assessment to reduce the scope of the basement / excavation and increase proposed deep soil permeable surfaces.

The figures below display the previous and current proposed basements.

Amendment to the basement layout has resulted in proposed deep soil increasing from 93.06 to become 108.34. Minimum deep soil required is 107.07sqm under Council’s controls.



Figure 3 – Previous (top) and proposed (bottom) basement plan (source: Common Office, dated 19/01/2025)

4. Proposal

The Modification seeks to amend the drawings approved under Condition 1 of DA/138/2025 and its subsequent modifications to facilitate the following.

1. Mirror/Flip the fire stairs which lead from the basement to second floor;
2. Enlarge the basement by approximately 22sqm;
 - a. Relocation of bicycle and motorbike spaces as well as bulky waste and plant room;
3. Provide two new car spaces (now six total);
4. Internal reconfiguration to units as follows;
 - a. Ground floor unit;
 - i. Internal wall reconfigurations;
 - ii. Enlargement of bedroom 1 to become master bedroom with reconfigured ensuite;
 - iii. Minor size reduction to bedroom 2;
 - iv. New location for bedroom 3 and new adjacent ensuite;
 - v. Pantry amended to accommodate pantry and power room;
 - b. First floor unit;
 - i. Internal wall reconfigurations;
 - ii. Enlargement of bedroom 1 to become master bedroom with reconfigured ensuite;
 - iii. Minor size reduction to bedroom 2;
 - iv. Bedroom 2 reduced in size to 2.9m x 3.0m
 - v. Bedroom 3 ensuite reconfigured to shared bathroom;
 - vi. Pantry amended to accommodate pantry and power room;
 - vii. Removal of laundry facilities – to be added back via condition as other units provide these facilities. Appears to be an oversight as this area previously provided laundry facilities;
 - c. Second floor unit
 - i. Internal wall reconfigurations;
 - ii. Laundry moved and bathroom reconfigured;
 - iii. Master bedroom enlarged with reconfigured ensuite;
 - iv. Bedroom 2 reduced in size to 2.9m x 2.7m;
 - v. Front balcony enclosed and reconfigured to provide bath and shower;
5. Amendment to window size and locations as follows;
 - a. West elevation (street facing windows) sizes adjusted to be consistent;
 - b. Northern elevation window adjustments;
 - c. Southern Elevation window adjustments;
6. First floor rear balcony extended from 1.8m to 2.3m. Increased size of rear planter;
7. First floor façade moved forward by approximately 300mm;
8. Three new roof skylights and move two existing skylights;
9. Gross floor area increased from 366.11sqm to 368.49sqm (2.38sqm increase);
10. Front setback hydrant booster moved south;
11. Angled splay to front fence instead of curve;

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12. Total landscaped area increased from 236.45sqm to become 246sqm (9.55sqm increase);
13. Increased tree root encroachment to tree 1 due to increased basement excavation;
14. Lower the basement RL from 33.99 to become 33.79;
15. Driveway extension within basement;
16. Rear ground floor verandah area reduced from 14sqm to 8sqm. Replaced with deep soil;
17. Fence screened elevations changed to wall tiles; and
18. Entry awning extended to cover larger area.

The **Figures** below illustrate the scope of changes.

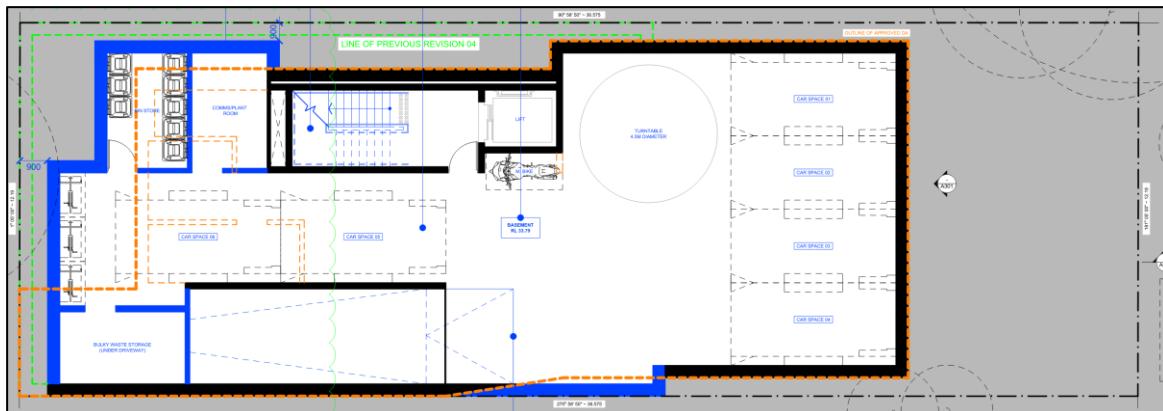


Figure 4 – Proposed basement plan (source: Common Office, dated 19/01/2025)

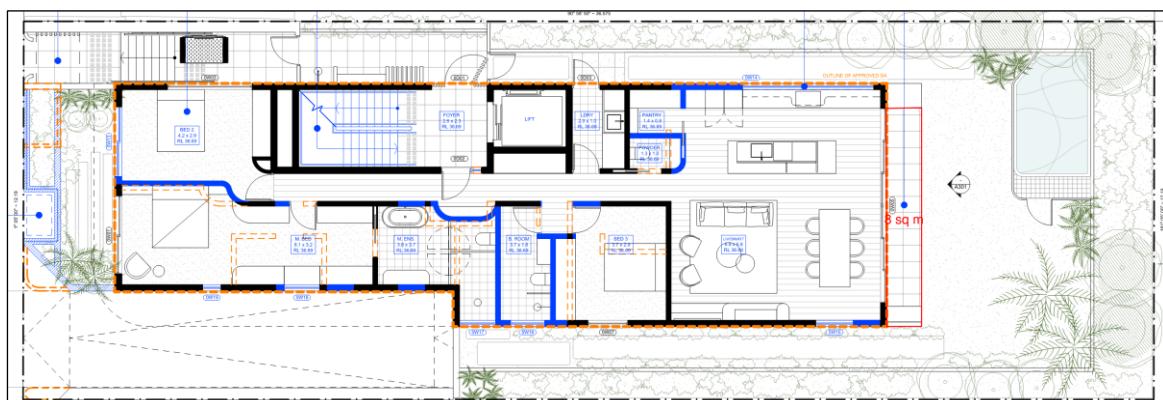


Figure 5 – Proposed ground floor plan (source: Common Office, dated 5/11/2025)

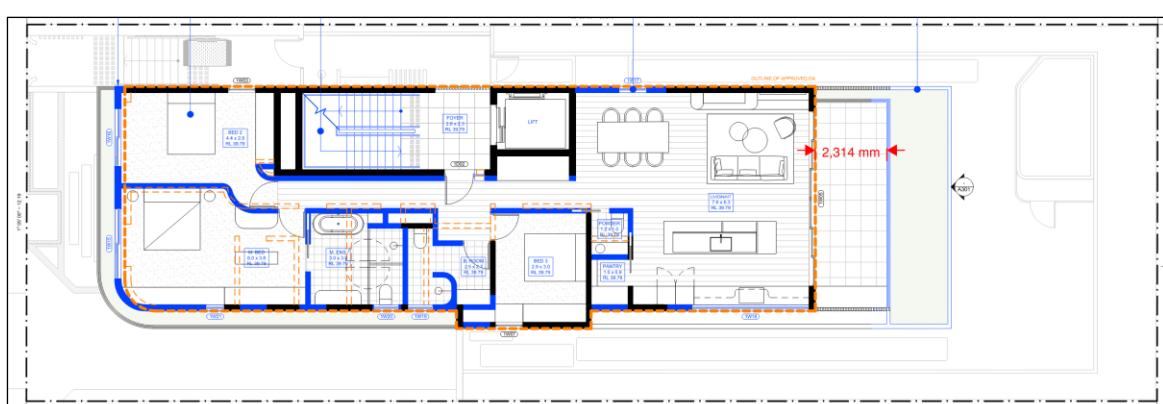


Figure 6 – Proposed first floor plan (source: Common Office, dated 5/11/2025)

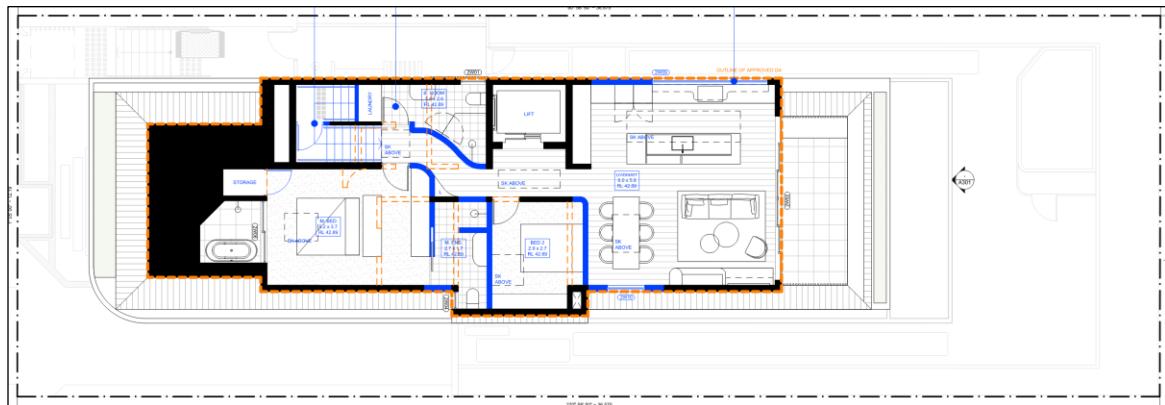


Figure 7 – Proposed second floor plan (source: Common Office, dated 5/11/2025)

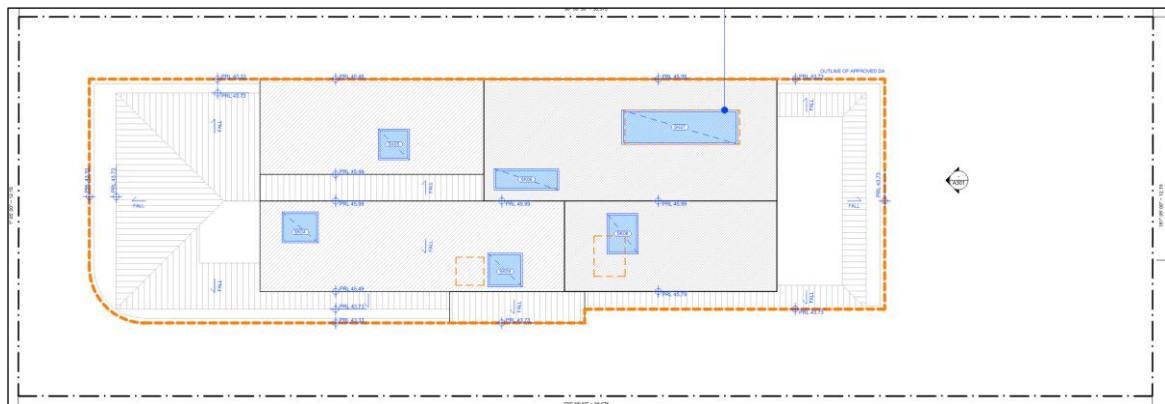


Figure 8 – Proposed roof plan (source: Common Office, dated 5/11/2025)

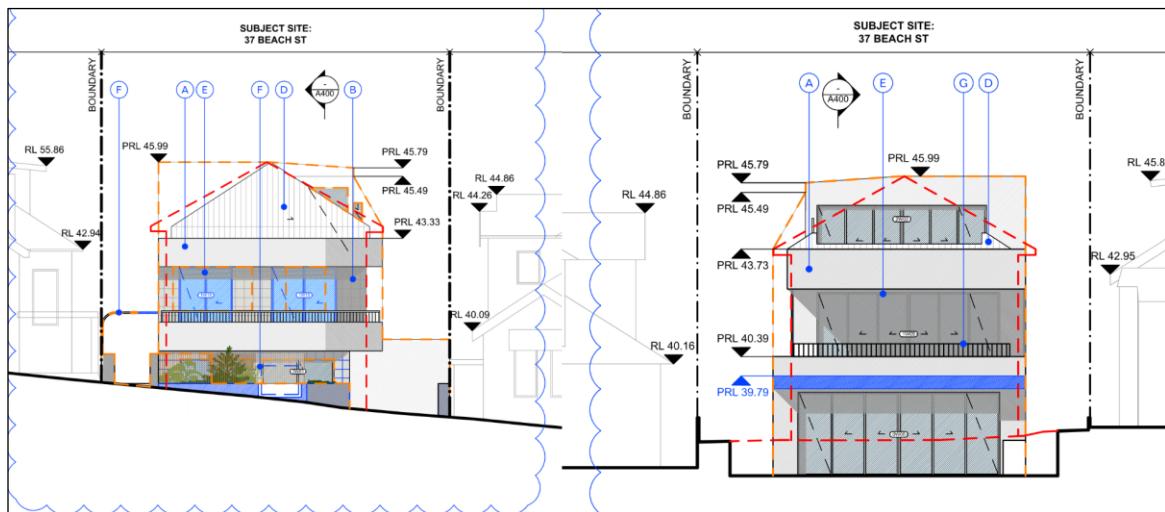


Figure 9 – Proposed east (left) & west (right) elevations (source: Common Office, dated 5/11/2025)

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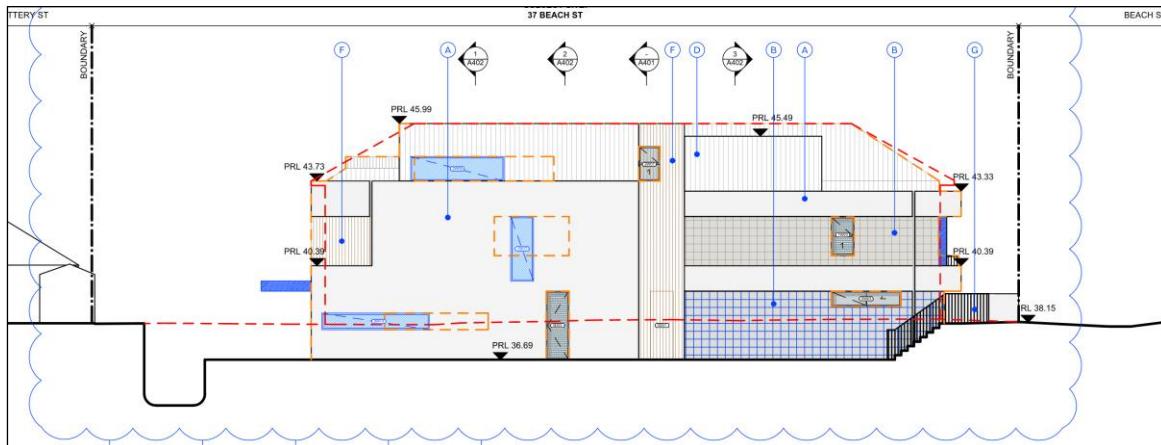


Figure 10 – Proposed north elevation (source: Common Office, dated 5/11/2025)



Figure 11 – Proposed south elevation (source: Common Office, dated 5/11/2025)

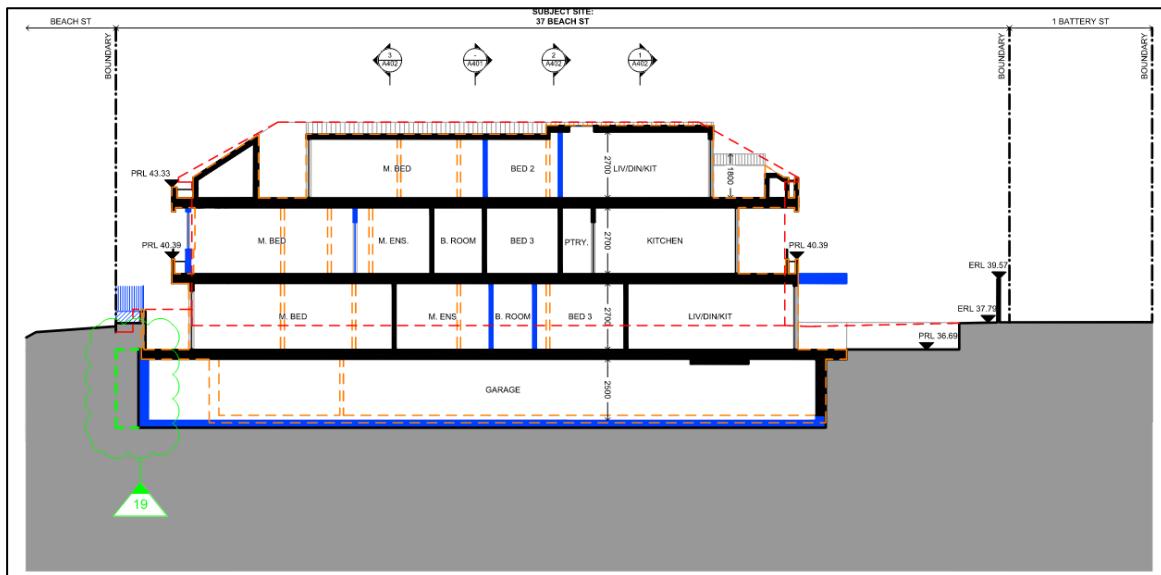


Figure 12 – Proposed Long Section (source: Common Office, dated 19/01/2025)

5. Section 4.55 Assessment

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

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

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

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

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

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

3. *Notification and Consideration of Submissions:*

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy.

No submissions were received during the course of assessment.

6. Planning Instruments

6.1 State Environmental Planning Policy (Housing) 2021

Chapter 4 – Design of Residential Apartment Developments

Chapter 4 of SEPP (Housing) applies to Residential Flat Buildings (RFB) which are at least three storeys and contain at least four dwellings.

The Modification maintains the previously approved RFB which is three storeys with three dwellings. Accordingly, Chapter 4 does not apply.

6.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

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

Council considers the previous satisfaction of the SEPP to be maintained through the Modification.

6.3 State Environmental Planning Policy (Resilience and Hazards) 2021

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

Council considers the previous satisfaction of the SEPP to be maintained through the Modification.

6.4 Randwick Local Environmental Plan (ver. 31/10/2025)

The Subject Site is zoned Residential R2 Low Density Residential under RLEP 2012. Within that zone development for the purpose of a RFB is prohibited as a non-specified use.

2 Permitted without consent
Home occupations; Recreation areas
3 Permitted with consent
Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Pond-based aquaculture; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Shops; Tank-based aquaculture
4 Prohibited
Funeral homes; Any other development not specified in item 2 or 3

Figure 13 – R2 permitted and prohibited uses (source: RLEP 2012, ver. 31/10/2025)

The Subject Site benefits from existing use rights as set out by Part 4, Division 4.11 of the Act.

Section 4.67 of the Act provides that *Environmental Planning and Assessment Regulation 2021 (the Regulations)* may make provisions for the carrying out of works to a building that benefits from existing use rights.

Clause 163 of the Regulations provides that an existing use may be rebuilt. Clause 166 of the Regulations provides the requirements for rebuilding of an existing use.

DA/138/2025 was previously found to satisfy the criterion for rebuilding of an existing use under the Regulations. It was further found to be satisfactory with regard to *Stromness Pty Limited v Woollahra Municipal Council [2006] NSWLEC 587*.

Council considers the previous satisfaction of the existing use rights to be maintained through the Modification.

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Cl. 4.1 Minimum Lot Size (subdivision)	275sqm	445.8sqm (no change)	(N/A no subdivision)
Cl. 4.3 Height of Building (Maximum)	9.5 Metres	8.91 Metres	Yes
Cl. 4.4 Floor Space Ratio (Maximum)	0.5:1 (222.9sqm)	0.88:1 (394.49sqm)	No – see assessment below

DA/138/2025 was approved with a total gross floor area of 366.11sqm. The Modification seeks to increase the total gross floor area of the development by 28.38sqm to become 394.49sqm. The below **Figures** demonstrate the areas (in pink) where the additional gross floor area will occur.

The only visible portion of the gross floor area to the streetscape is the result of the 300mm front setback decrease to the first floor façade.

The two additional carspaces proposed are in excess of the minimum required by Council and so must be counted. These carspaces and the additional staircase gross floor area to the second floor would not alter the envelope of the development. These aspects are, for all intents and purposes of this development application, a technical increase with no physical effects upon the approved building envelope of the development.

Based on the above, an assessment of the additional proposed gross floor area against the relevant floor space ratio objectives is provided below.

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

The size and scale of the development is suitably in line with that previously deemed acceptable. The difference in scale resultant from the first floor being brought forward 300mm would be an imperceptible change.

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

The building continues to be well articulated and responds to environmental and energy needs.

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

The additional gross floor area is not considered to result in an unreasonable visual bulk, privacy impact, shadow impacts, or view impacts.

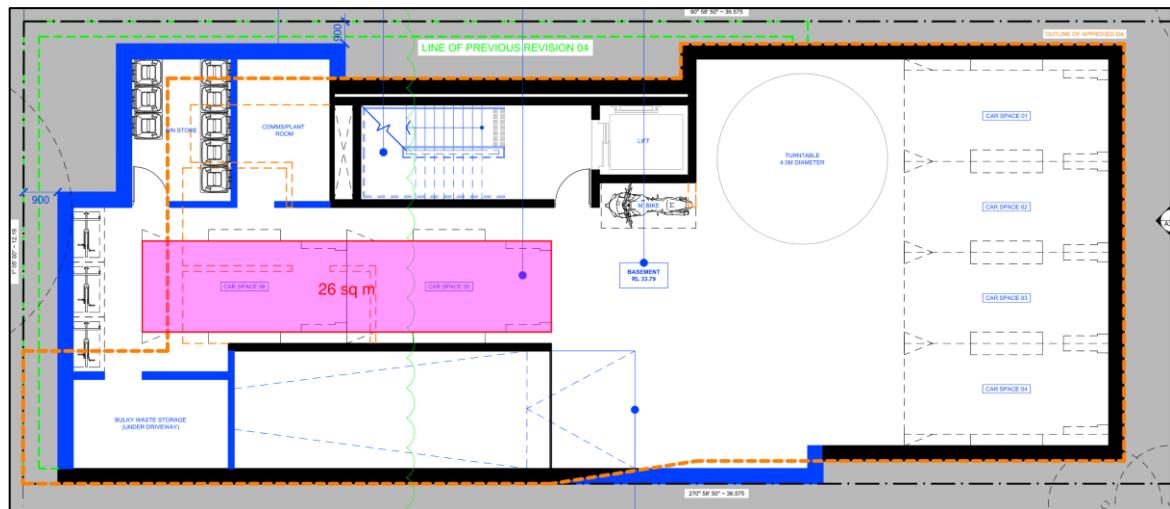


Figure 14 – Proposed basement plan additional GFA.

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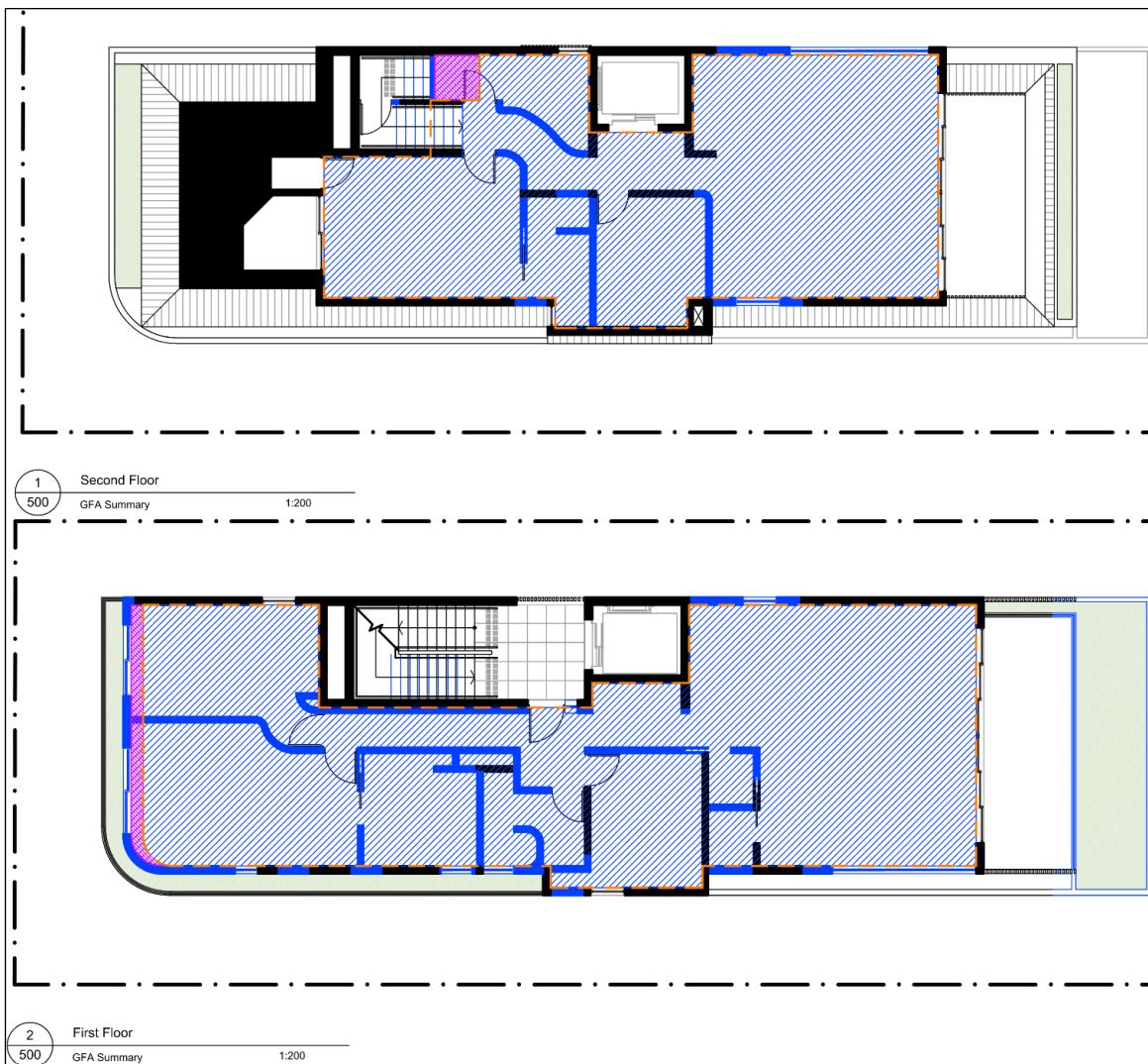


Figure 15 – New proposed GFA calculation (source: Common Office, dated 5/11/2025)

6.5 Randwick Comprehensive Development Control Plan 2013

Part B4: Landscaping and Biodiversity

Council is satisfied that the proposed development continues to meet the landscape requirements in accordance with Part B4 of RDCP 2013

Part B6: Recycling and Waste Management

Council is satisfied that the proposed development continues to meet waste requirements in accordance with Part B6 of RDCP 2013.

Part B7: Transport, Traffic, Parking and Access

Council is satisfied that the proposed development continues to meet the parking requirements in accordance with Part B7 of RDCP 2013.

Minimum required parking is four spaces. Six spaces proposed (two additional) through the modification. Those additional spaces have been calculated to contribute to gross floor area. Council's development engineer was satisfied the proposed additional parking spaces were suitable.

Part B8: Water Management

Council is satisfied that the proposed development continues to meet the water management requirements in accordance with Part B8 of RDCP 2013.

Part B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Application	Compliance
	<ul style="list-style-type: none"> i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone. 	<ul style="list-style-type: none"> i) Presentation to the surrounding area substantially the same as that previously approved. ii) No outbuildings. iii) Colour scheme maintained with light and neutral hues. iv) Not proposed. v) No change to previous approved materials. vi) Plant species generally maintained. vii) Deep soil continues to comply. viii) rear pool location maintained. ix) N/A x) N/A 	Yes

Section C2: Medium Density Residential

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
2. Site Planning			
2.1	Site Layout Options		
	<p>Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for:</p> <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example 	No change.	No change.
2.2 Landscaped open space and deep soil area			
2.2.1	Landscaped open space		
	A minimum of 50% of the site area is to be landscaped open space.	Minimum = 222.9sqm DA/138/2024 = 236.45sqm	Yes

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
		Proposed = 246sqm. 9.55sqm increase.	
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Minimum = 111.45sqm. DA/138/2025 = 107.07sqm. Proposed = 108.34 1sqm increase compared to original approval.	Minor non-compliance and net increase - acceptable
	(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.	Areas counted achieve the definition.	Yes
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.	Achieved.	Yes
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	Basement below avoided for calculation.	Yes
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Deep soil is contiguous.	Yes
2.3	Private and communal open space		
2.3.1	Private open space		
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p> <p>For residential flat buildings:</p> <p>(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.</p> <p>(vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m.</p>	<p>No change other than increase to first floor balcony size and conversion of level 2 front balcony to shower/bath.</p> <p>Level 2 to retain rear balcony.</p>	Remains suitable

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
2.3.2	Communal open space		
	<p>Communal open space for residential flat buildings is to be:</p> <ul style="list-style-type: none"> (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. 	<p>No communal open space previously approved.</p> <p>Maintained.</p>	Maintained
3. Building Envelope			
3.1	Floor space ratio		
3.3	Building depth		
	<p>For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.</p>	No change	No change
3.4	Setbacks		
3.4.1	Front setback		
	<ul style="list-style-type: none"> (i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways. 	<p>Front setback consistent with approval. No perceptible proposed.</p> <p>suitably previous readily difference</p>	Yes
3.4.2	Side setback		

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 14m ≤ site frontage width - <16m: 2.5m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>	No change proposed to side setbacks.	Yes
3.4.3	<p>Rear setback</p> <p>For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.</p>		
	<p>Minimum = 5.4 metres DA/138/2025 = 8.65 metres</p> <p>Building line maintained at 8.65 metres.</p> <p>First floor rear planter bed to be 6.5 metres from rear boundary. Continues to comply.</p>		
4.	Building Design		
4.1	Building façade		

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs. 	Building façade suitably in line with that previously approved.	Suitable
4.2	Roof design		
	<ul style="list-style-type: none"> (i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape. (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 	No changes to roof form/design outside of skylights.	Remains suitable

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. 	<p>In line with previous approval outside of internal layout changes. Those changes are acceptable with regard to this control.</p>	Remains suitable
4.4	External wall height and ceiling height		

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies. (iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	No change. Previous arrangement maintained.	No change
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access. (ii) Present new development to the street in the following manner: - 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. (iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.	Minor sightline improvement through front fence splay. No change	Yes No change
4.6	Internal circulation		

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 	Stairs and lifts maintained.	Yes
	<p>(ii) Use multiple access cores to:</p> <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites. - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. 	Single core maintained.	Yes
	<p>(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.</p>	(iii) N/A	N/A
4.7	Apartment layout		
	<p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. <p>Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</p>	<p>(i) N/S/E/W aspects maintained for all dwellings.</p>	Yes
	<p>(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.</p>	(ii) Generous living spaces and rooms maintained.	Yes
	<p>(iii) Provide private open space in the form of a balcony, terrace or courtyard</p>	(iii) POS maintained for all units.	Yes

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	for each and every apartment unit in a development.		
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	(iv) No change to kitchen locations.	Yes
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m2 and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	Appropriate balconies maintained for all units.	Yes
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m2. All ground floor apartments are to have direct access to a terrace.	<p>Ground floor terrace area to be reduced from 12sqm / 2m width to become 7sqm / 1.1m width.</p> <p>This is acceptable as the ground floor unit still retains the same effective rear private open space, consistent with the objectives of 4.8.</p> <p>The resulting private open space for the ground floor unit will be able to facilitate passive recreational activities and provide expected amenities for that unit.</p> <p>Council considers the variation appropriate in this regard.</p>	Minor variation acceptable
4.9	Colours, materials and finishes		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.	No change proposed to schedule.	
	(ii) The selection of colour and material palette must complement the character and style of the building.		
	(iii) Use the following measures to complement façade articulation:		
	<ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. 		
	(iv) Avoid the following materials or treatment:		
	<ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting 		

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - 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 <p>(v) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vi) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		
4.12	Earthworks Excavation and backfilling		
	<p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p>	<p>(i) Approximate four metre cut previously proposed. To be increased by 200mm through basement RL lowering.</p> <p>(ii) Proposed to facilitate basement.</p> <p>(iii) Slope not significant.</p> <p>Variation to the earthwork control is appropriate to facilitate basement parking.</p> <p>Basement parking is generally expected alongside development of an RFB.</p> <p>Without basement parking the development would be unable to reasonably achieve parking and service requirements.</p>	Yes
	<p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of</p>	<p>(iv) All new walls to be set back minimum 900mm from boundary.</p> <p>Previous conditions remain imposed to suitably address this.</p> <p>(v) N/A</p> <p>(vi) Retaining walls not proposed.</p>	Yes

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	2200mm, as measured from the ground level (existing).		
5. Amenity			
5.1 Solar access and overshadowing			
	Solar access for proposed development		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	Solar access to dwellings unchanged.	Unchanged.
	(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.		
	(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.		
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		
	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.	Solar access to neighbouring development generally unchanged.	Suitable
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2 Natural ventilation and energy efficiency			
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	New skylights provided to improve lighting. Ventilation substantially the same.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.		

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.</p> <p>(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.</p>		
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or 	<p>(i) window locations remain suitable with regard to locations.</p> <p>(ii) Balcony locations maintained.</p> <p>(iii) No change.</p> <p>(iv) Maintained as before.</p> <p>(v) Suitable privacy measures retained.</p>	Yes

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>windows of the adjacent dwellings</p> <ul style="list-style-type: none"> - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy	<p>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</p> <p>(ii) Separate "quiet areas" such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</p> <p>(iii) Utilise appropriate measures to maximise acoustic privacy such as:</p> <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	<p>Substantially the same as previously approved.</p> <p>Yes</p>
5.5	View sharing	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate</p>	<p>Previously approved envelope retained.</p> <p>No significant view impacts foreseen.</p> <p>Yes</p>

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	potential view loss impacts in the development application.		
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.		
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.		
	(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.		
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.		
	(vi) Resident car parking areas must be equipped with security grilles or doors.		
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Substantially the same.	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.		
	(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.		
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.		
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.		
6.	Car parking and access		
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.		
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	No change to location and only supported change to increased basement size facilitating an additional two parking spaces.	Yes
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide		

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>landscape planting within the setback areas.</p> <p>(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.</p> <p>(v) For residential flat buildings, comply with the following:</p> <ul style="list-style-type: none"> (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage. 		
6.2	Configuration		
	<p>(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.</p> <p>(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.</p> <p>(iv) Provide basement or semi-basement car parking consistent with the following requirements:</p> <ul style="list-style-type: none"> (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. 	Substantially the same.	Yes

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DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>(f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as:</p> <ul style="list-style-type: none"> - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain. 		

7. Fencing and Ancillary Development

7.1	Fencing		
	<p>(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering.</p> <p>(ii) Sandstone fencing must not be rendered and painted.</p> <p>(iii) The following materials must not be used in fences:</p> <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials <p>(iv) Expansive surfaces of blank rendered masonry to street frontages must be avoided.</p>	Substantially the same.	Yes
7.2	Front Fencing		
	<p>(i) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>(ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers.</p> <p>(iii) Construct the non-solid portion of the fence with light weight materials that are at least 30% open and evenly distributed along the full length of the fence.</p> <p>(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios:</p> <ul style="list-style-type: none"> - Front fence for sites facing arterial roads. 	Substantially the same.	Yes

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. Such solid fences must be articulated through a combination of materials, finishes and details, and/or incorporate landscaping, so as to avoid continuous blank walls. <p>(v) The fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping.</p> <p>(vi) The preferred materials for front fences are natural stone, face bricks and timber.</p> <p>(vii) Gates must not open over public land.</p> <p>(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.</p>		
7.3	Side and Rear Fencing		
	<p>(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).</p> <p>(ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits.</p> <p>(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</p> <p>(iv) Side or common boundary fences must be finished or treated on both sides.</p>	Substantially the same.	Yes
7.6	Storage		
	<p>(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.</p> <p>(ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce</p>	Substantially the same.	Yes

DCP Clause	Control	Application	Compliance (Yes/No/NA/Conditioned)
	<p>(iii) sight lines or obstruct pedestrian access to the parked vehicles.</p> <p>In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <ul style="list-style-type: none"> (a) Studio apartments – 6m³ (b) 1-bedroom apartments – 6m³ (c) 2-bedroom apartments – 8m³ (d) 3 plus bedroom apartments – 10m³ 		
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	Substantially the same.	Yes

7. Key Issues

There are no key issues associated with the Modification.

8. Referral comments

No internal or external referral were required in the assessment of the subject application.

9. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Sustainable Buildings) 2022.</p> <p>Clause 55A of the EP & A Regulation requires that a new BASIX certificate be lodged for amended plans or where a section 4.55 modification makes a material change to the BASIX commitments as originally approved.</p> <p>The applicant has submitted a new BASIX certificate. The plans have been checked with regard to this new certificate and they are consistent with the requirements indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP: Sustainable Buildings were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p>

Section 4.15 'Matters for Consideration'	Comments
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 development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The Subject Site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received during the course of assessment.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

10. Conclusion

The application is recommended for approval for the following reasons:

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

Responsible officer: Dean Lidis, Environmental Planning Officer

File Reference: DA/138/2025/B

D2/26

Modification Summary

Application Number (PAN#)	Determination Date	Modification Description
PAN-546839	26/06/2025	S4.55(1) error modification to amend condition 1 so that drawings may be stamped.
PAN-588409	12/02/2026	S4.55 (2) to amend condition 1 to mirror the fire stairs, enlarge basement and lowering of the basement finished floor level, addition of 2 parking spaces, internal amendments to units, amendments to window sizes/locations, first floor rear balcony extension, provision of new skylights, changes to first floor front façade, hydrant booster re-location, amendments to tree management plan, driveway extension to the lower level and extension of side awning.

Terms and Reasons for Conditions

Under section 118(3)(a) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

Condition																																																																				
<p>1. Approved plans and documentation Development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:</p> <table border="1"> <thead> <tr> <th>Plan</th> <th>Drawn by</th> <th>Dated</th> <th>Received by Council</th> </tr> </thead> <tbody> <tr> <td>Site Plan DA100 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Basement Plan DA200 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Ground Plan DA201 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>First Plan DA202 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Second Plan DA203 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Roof Plan DA204 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Driveway Plan DA205 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Second Plan RCP DA250 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>West Elevation DA300 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>East Elevation DA301 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>North Elevation DA302 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>South Elevation DA303 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Long Section DA400 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Short Section DA401 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Short Section Sketches DA402 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> <tr> <td>Materials Schedule DA504 [02]</td> <td>Common Office</td> <td>29/05/2025</td> <td>23/06/2025</td> </tr> </tbody> </table>	Plan	Drawn by	Dated	Received by Council	Site Plan DA100 [02]	Common Office	29/05/2025	23/06/2025	Basement Plan DA200 [02]	Common Office	29/05/2025	23/06/2025	Ground Plan DA201 [02]	Common Office	29/05/2025	23/06/2025	First Plan DA202 [02]	Common Office	29/05/2025	23/06/2025	Second Plan DA203 [02]	Common Office	29/05/2025	23/06/2025	Roof Plan DA204 [02]	Common Office	29/05/2025	23/06/2025	Driveway Plan DA205 [02]	Common Office	29/05/2025	23/06/2025	Second Plan RCP DA250 [02]	Common Office	29/05/2025	23/06/2025	West Elevation DA300 [02]	Common Office	29/05/2025	23/06/2025	East Elevation DA301 [02]	Common Office	29/05/2025	23/06/2025	North Elevation DA302 [02]	Common Office	29/05/2025	23/06/2025	South Elevation DA303 [02]	Common Office	29/05/2025	23/06/2025	Long Section DA400 [02]	Common Office	29/05/2025	23/06/2025	Short Section DA401 [02]	Common Office	29/05/2025	23/06/2025	Short Section Sketches DA402 [02]	Common Office	29/05/2025	23/06/2025	Materials Schedule DA504 [02]	Common Office	29/05/2025	23/06/2025
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Condition			
Window Schedule – Ground DA600 [02]	Common Office	29/05/2025	23/06/2025
Window Schedule – First DA601 [02]	Common Office	29/05/2025	23/06/2025
Window Schedule – Second & Roof DA602 [02]	Common Office	29/05/2025	23/06/2025
BASIX Certificate No.		Dated	Received by Council
1782563M Note: equally applicable to plans referenced above.		06 February 2025	21 February 2025

EXCEPT where amended by:

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

Plan	Drawn by	Dated	Received by Council
Site Plan DA100 [04]	Common Office	05/11/2025	19/01/2026
Basement Plan DA200 [05]	Common Office	19/01/2026	19/01/2026
Ground Floor Plan DA201 [04]	Common Office	05/11/2025	19/01/2026
First Floor Plan DA202 [04]	Common Office	05/11/2025	19/01/2026
Second Floor Plan DA203 [04]	Common Office	05/11/2025	19/01/2026
Roof Plan DA204 [04]	Common Office	05/11/2025	19/01/2026
Driveway Plan DA205 [04]	Common Office	05/11/2025	19/01/2026
Second Plan RCP [04]	Common Office	05/11/2025	19/01/2026
West Elevation DA300 [04]	Common Office	05/11/2025	19/01/2026
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Window Schedule – Second & Roof DA602 [04]	Common Office	05/11/2025	19/01/2026

BASIX Certificate No.	Dated	Received by Council
1819001M	27 October 2025	14 November 2025

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

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

(Condition amended – 26/06/2025 – DA/138/2025/A – PAN-546839)
(Condition amended – 12/02/2026 – DA/138/2025/B – PAN-588409)

2. **Amendment of Plans & Documentation**

The Architectural Drawings approved under Condition 1 must be amended as follows. Amended documents must be provided to and approved by Council's

Condition
Manager Development Assessment prior to the issue of a construction certificate.
<ul style="list-style-type: none"> Amend all relevant architectural drawings to increase the ceiling height of second floor unit's living/dining/kitchen area up to a continuous 2700mm. RL 45.49 may not increase by more than 300mm. <p>The resulting roof form adjoining the southern elevation of the second floor unit living/dining/kitchen area must incorporate a mansard style roof.</p> <ul style="list-style-type: none"> Laundry facilities are to be reintroduced to the empty space directly south of the lift area on the first floor plan. <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.</p>
3. Garage Roller Door Details must be included in the construction certificate regarding the type of garage roller door used. The principal certifier is to ensure that the chosen roller door is permeable and allows for ventilation into the basement garage and that it will not cause unreasonable noise or disturbance to neighbouring properties when in operation. Condition Reason: To ensure amenity of the site and surrounding area.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition
4. Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation. Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
5. External Colours, Materials & Finishes The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.
6. Section 7.12 Development Contributions In accordance with the applicable Randwick City Council S7.12 Development Contributions Plan, based on the development cost of \$3,625,000 the following applicable monetary levy must be paid to Council: \$36,250.00. The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed

Condition
contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Condition Reason: To ensure relevant contributions are paid.

7.

Long Service Levy Payments

Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with section

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.

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

8.

Security Deposits

The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the *Environmental Planning and Assessment Act 1979*:

- \$6,000.00 - Damage / Civil Works Security Deposit

Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.

The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

To obtain a refund of relevant deposits, a *Security Deposit Refund Form* is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.

Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.

9.

Sydney Water

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

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

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

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

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

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

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

10.

Building Code of Australia

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

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

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

11.

Building Code of Australia

Access and facilities for people with disabilities must be provided to new building work in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010 and relevant Australian Standards, to the satisfaction of the Registered Certifier for the development and details are to be included in the construction certificate for the development.

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

12.

BASIX Requirements

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

The required commitments listed and identified in the BASIX Certificate must be

Condition
included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.
The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.
Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.
<p>13. Site stability, Excavation and Construction work A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:</p> <p>Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.</p> <p>Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.</p> <p>Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.</p> <p>Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.</p> <p>Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.</p> <p>Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.</p>
<p>14. Building Code of Australia – Swimming Pools Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the <i>Building Code of Australia</i> and be provided with a child-resistant barrier in accordance with the <i>Swimming Pools Act 1992</i>, the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).</p> <p>Details of compliance are to be provided in the Construction Certificate.</p> <p>Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.</p> <p><i>Note: This development consent does not approve the design and location of swimming/spa pool safety barriers. Swimming/spa pool safety barriers are required to comply with the Swimming Pools Act 1992, Swimming Pools Regulation 2018 and relevant Standards. Details of compliance are required to be included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development.</i></p>

Condition	
Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area.	
15.	<p>Swimming Pool Safety</p> <p>Swimming pools are to be designed, installed and operated in accordance with the following general requirements:</p> <ul style="list-style-type: none"> • Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation. • Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance. • Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems. • Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.
	<p>Condition Reason: To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area.</p>
16.	<p>Arborist Report</p> <p>Details of the recommendations under section 9 of the <i>Arboricultural Impact Assessment Report</i> prepared by <i>Martin Peacock Tree Car</i> dated 18 November 2024 must be included in the construction certificate.</p>
	<p>Condition Reason: To ensure the recommendations of the arborist report are implemented.</p>
17.	<p>Electricity Substation</p> <p>The applicant must liaise with Ausgrid prior to obtaining a construction certificate (for any above ground works), to determine whether or not an electricity substation is required for the development. Any electricity substation required for the site as a consequence of this development shall be located within the site and shall be screened from view. The proposed location and elevation shall be shown on relevant construction certificate and landscape plans.</p>
	<p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
18.	<p>Survey Infrastructure</p> <p>Prior to the issue of any Construction Certificate, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and the Council that includes and addresses the following:</p> <ul style="list-style-type: none"> (a) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No.11 have been made for the subject site. (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted upon by the proposal. If no impact is identified this must be detailed by the Registered Land Surveyor.

Condition
(c) In the event that survey infrastructure is identified as vulnerable or will be affected or impacted upon by the approved development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) is required.

The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks.

Note: Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any survey mark unless authorised to do so by the Surveyor-General.

Condition Reason: To ensure the development satisfies requirements with regards to the Preservation of Survey Infrastructure (POSI) under Section 24 of the Surveying and Spatial Information Act 2002.

19.

Traffic Conditions

Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splay 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the Principal Certifier, are to be included in the construction certificate documentation.

Condition Reason: To ensure adequate sightlines for pedestrians and drivers are provided

20.

Traffic Conditions

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.

Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.

21.

Design Alignment levels

The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:

- RL 37.26m AHD at the northern driveway edge.**
- RL 37.07m AHD at the southern driveway edge.**
- RL 38.16m AHD at the pedestrian entrance.**

The design alignment levels at the property boundary as issued by Council and their relationship to the kerb must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment levels must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

Condition
Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6888.
Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.
22. Design Alignment levels
The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of \$768 calculated at \$63.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.
Condition Reason: To ensure all driveway & footpath works are designed and constructed in accordance with Council requirements and Australian Standards.
23. Design Alignment levels
The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.
The height of the building must not be increased to satisfy the required driveway gradients.
Condition Reason: To ensure all driveway & footpath works are designed and constructed in accordance with Council requirements and Australian Standards.
24. Stormwater Drainage & Flood Management
<u>Stormwater drainage plans have not been approved as part of this development consent.</u> Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:
<ul style="list-style-type: none"> a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition. b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system. c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories: <ul style="list-style-type: none"> i. Roof areas ii. Paved areas iii. Grassed areas iv. Garden areas d) Where buildings abut higher buildings and their roofs are "flashed

Condition
in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.

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

25. Stormwater Drainage & Flood Management

Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line.

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

26. Stormwater Drainage & Flood Management

The written approval of Council is required to be obtained in relation to all drainage and infrastructure works which are located externally from the site within the road reserve/public place, in accordance with the requirements of the *Roads Act 1993*. Detailed plans and specifications of the proposed works are to be submitted to and approved by the Director of City Services prior to commencing any works within the road reserve/public place.

All works within the road reserve/public place must be carried out to the satisfaction of Council and certification from a professional engineer is to be provided to Council upon completion of the works.

Relevant Council Assessment and Inspection fees, as specified in Council's adopted Pricing Policy, are required to be paid to Council prior to commencement of the works.

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

27. Stormwater Drainage & Flood Management

The site stormwater drainage system is to be provided in accordance with the following requirements;

- a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.
- b) The stormwater must be discharged (by gravity) either:
 - i. Directly to the kerb and gutter in front of the subject site in

Condition
Beach Street; or
<p>ii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system).</p>
NOTES:
<ul style="list-style-type: none"> • Infiltration will not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the proposed infiltration area, or the ground conditions comprise low permeability soils such as clay. • If the owner/applicant is able to demonstrate to Council that the ground conditions preclude the use of an infiltration system, a pump-out system may be permitted to drain the portion of the site that cannot be discharged by gravity to Council's street drainage system in front of the property. <p>Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer in accordance with the conditions of this consent and Council's Private Stormwater Code.</p>
<p>c) Should stormwater be discharged to Council's street drainage system the maximum discharge from the site must not exceed 25L/S for all storm events up to the 1 in 20 year storm event. All stormwater run-off from the site exceeding this amount is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier.</p> <p>An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an average recurrence interval of 100 years (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1 in 100 year storm.</p>
<p>d) Should stormwater be discharged to an infiltration system the following requirements must be met;</p> <p>i. Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code.</p> <p>ii. The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system.</p> <p>Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.</p> <p>iii. Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure)</p>

Condition
iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless the boundary is common to Council land (e.g. road, laneway or reserve).
e) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.
Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.
f) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.
The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.
g) Should a charged system be required to drain any portion of the site, the charged system must be designed such that;
i. There are suitable clear-outs/inspection points at pipe bends and junctions.
ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet.
h) Generally, all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However, the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
i) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.
Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:
<ul style="list-style-type: none"> • The base of the pit being located a minimum 300mm under the invert level of the outlet pipe. • The pit being constructed from cast in-situ concrete, precast concrete or double brick. • A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes. • A galvanised heavy-duty screen being provided over the outlet

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

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

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

k) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):

- i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
- ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
- iii. 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
- iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
- v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

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

l) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.

m) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.

n) Mulch or bark is not to be used in on-site detention areas.

Condition
o) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.

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

28. **Site seepage & Dewatering**

The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:

- a) Sub-soil drainage must not be connected or discharged directly or indirectly to Council's street gutter.
- b) Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).
- c) Sub-soil drainage systems (if provided) must comply with one or more of the following requirements:-
 - i. The system may be connected directly to Council's underground drainage system (but only with the prior written approval of Council, as required under the *Roads Act 1993*).
 - ii. Any sub-soil drainage systems must be restricted from entering the basement areas of the building and the stormwater drainage system, by tanking/waterproofing the basement areas of the building.
 - iii. Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.
- d) Details of the proposed stormwater drainage system including methods of sub-soil drainage, tanking/waterproofing (as applicable) must be prepared or approved by a suitably qualified and experienced *Professional Engineer* to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. **A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier**

Condition Reason: To control and manage any seepage/groundwater so as not to adversely impact neighbouring properties and Council's stormwater assets.

29. **Waste Management**

Waste Management provisions must be implemented in accordance with the Operational Waste Management Plan submitted with the development application (Prepared by Elephants Foot Consulting dated 27/11/2024).

Condition Reason: To ensure the development effectively manages its waste

Condition
during construction and operational phases.

30.

Waste Management

The garbage room shall be sized to contain a total of 6 x 240 litre bins (comprising of 2 garbage bins, 2 recycling bins & 2 FOGO bins) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.

Condition Reason: To ensure adequate waste management for the life of the development.

31.

Waste Management

A bulky waste storage room must be provided in proximity to the bin room.

Condition Reason: To ensure adequate waste management for the life of the development.

32.

Waste Management

The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.

Condition Reason: To ensure adequate waste management for the life of the development.

33.

Public Utilities

A *Public Utility Impact Assessment* must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.

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

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

BEFORE BUILDING WORK COMMENCES

Condition

34.

Building Certification & Associated Requirements

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

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

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

- b) a Registered (Building) Certifier must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an occupation certificate; and

	Condition
	<p>c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and</p> <p>d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and</p> <p>e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.</p>
	<p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
35.	<p>Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and <i>sections 69 & 71 of the Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p>
36.	<p>Dilapidation Reports</p> <p>A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the <i>Principal Certifier</i> for the development.</p> <p>The dilapidation report must be submitted to the Principal Certifier, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).</p> <p>Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
37.	<p>Construction Site Management Plan</p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none">• location and construction of protective site fencing and hoardings• location of site storage areas, sheds, plant & equipment• location of building materials and stock-piles• tree protective measures• dust control measures• details of sediment and erosion control measures• site access location and construction

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

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

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

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

38.

Construction Site Management Plan

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

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

39.

Construction Noise & Vibration Management Plan

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.

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

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

Condition
A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.
(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.
Condition Reason: To protect the amenity of the neighbourhood during construction.
40. Public Liability The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.
Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.
41. Construction Traffic Management An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Beach Street for the duration of the demolition & construction works. The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee. The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work. Condition Reason: To ensure construction traffic is appropriately managed and there is sufficient on-street space for construction and delivery vehicles as required.
42. Construction Traffic Management A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work. The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council: <input type="checkbox"/> A description of the demolition, excavation and construction works <input type="checkbox"/> A site plan/s showing the site, roads, footpaths, site access points and vehicular movements

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Condition
<input type="checkbox"/> Any proposed road and/or footpath closures
<input type="checkbox"/> Proposed site access locations for personnel, deliveries and materials
<input type="checkbox"/> Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
<input type="checkbox"/> Provision for loading and unloading of goods and materials
<input type="checkbox"/> Impacts of the work and vehicular movements on the road network, traffic and pedestrians
<input type="checkbox"/> Proposed hours of construction related activities and vehicular movements to and from the site
<input type="checkbox"/> Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)
<input type="checkbox"/> Any activities proposed to be located or impact upon Council's road, footways or any public place
<input type="checkbox"/> Measures to maintain public safety and convenience

The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.

Condition Reason: To ensure construction traffic is appropriately managed and there is sufficient on-street space for construction and delivery vehicles as required.

43. **Construction Traffic Management**

Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

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

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

44. **Public Utilities**

Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any demolition, excavation or building works.

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

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

DURING BUILDING WORK

Condition
45. Site Signage It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and

Condition
be maintained throughout the works, which contains the following details:
<ul style="list-style-type: none"> a) showing the name, address and telephone number of the principal certifier for the work, and b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and c) stating that unauthorised entry to the work site is prohibited.
The sign must be—
<ul style="list-style-type: none"> a) maintained while the building work is being carried out, and b) removed when the work has been completed.
This section does not apply in relation to—
<ul style="list-style-type: none"> a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.
Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

46.

Restriction on Working Hours

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

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

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

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

47.

Noise & Vibration

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

Condition Reason: To protect the amenity of the neighbourhood during

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

Condition
<p>d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.</p> <p>e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.</p> <p>f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.</p> <p>g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.</p> <p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p>

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

51.

Site Accessway

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

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

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

52.

Dust Control

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

Dust control measures and practices may include:

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

Condition
<ul style="list-style-type: none"> • <i>Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.</i> • <i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i> • <i>Landscaping and revegetation of disturbed areas.</i>
Condition Reason: To require details of measures that will minimise impacts to the public, and the surrounding environment, during site works and construction.
<p>53. Excavations and Support of Adjoining Land In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p>
Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.
<p>54. Complaints Register A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.</p> <p>Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.</p> <p>Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.</p>
<p>55. Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
<p>56. Survey Report A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>
<p>57. Project Arborist</p>

Condition

Demolition of existing pavements and structures within TPZ areas shall avoid disturbance of the underlying sub grade. Where possible, the existing footing of the front boundary wall shall be left in situ to minimise root disturbance within the TPZ area of Tree T1. Where the footing requires removal, the footing shall be broken up into small sections mechanically and removed by hand.

No over excavation shall be permitted within TPZ areas when constructing the basement, swimming pool and landscape retaining walls. Excavation works and root pruning within the TPZ areas of trees T1-T7 shall be supervised/undertaken by the Project Arborist.

New trees shall be grown and supplied in accordance with AS:2303 2018 Tree stock for landscape use. The planting and aftercare of the trees shall be undertaken by a qualified horticulturalist (minimum AQF level 3). Planting pits for advanced size trees shall be excavated using hand tools and where roots >25mm diameter are encountered the location of the planting pit shall be adjusted unless root pruning is approved by the Project Arborist.

Condition Reason: To ensure works are completed to arborist specifications.

58.

Site Seepage & Stormwater

Details of the proposed connection and or disposal of any site seepage or construction site stormwater to Council's stormwater drainage system must be submitted to and approved by Council's Development Engineering Coordinator, prior to commencing these works, in accordance with section 138 of the *Roads Act 1993*.

Details must include the following information:

- Stormwater/De-Watering Management Plan (prepared by a suitably qualified Environmental Consultant);
- Detailed plans and specifications;
- Hydraulic engineering details of the proposed disposal/connection of groundwater or site stormwater to Council's drainage system
- Volume of water to be discharged
- Location and size of drainage pipes
- Duration, dates and time/s for the proposed works and disposal
- Details of water quality and compliance with the requirements of the *Protection of the Environment Act 1997*
- Details of associated plant and equipment, including noise levels from the plant and equipment and compliance with the requirements of the *Protection of the Environment Act 1997* and associated Regulations and Guidelines
- Copy of any required approvals and licences from other Authorities (e.g. A water licence from the Department of Planning/Department of Water & Energy).
- Details of compliance with any relevant approvals and licences

Condition Reason: To control and manage any seepage/groundwater so as not to adversely impact neighbouring properties, public health, and Council's stormwater assets.

59.

Road/Asset Opening Permit

Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:

- a) A *Road / Asset Opening Permit* must be obtained from Council prior to

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Condition
carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the <i>Roads Act 1993</i> and all of the conditions and requirements contained in the <i>Road / Asset Opening Permit</i> must be complied with.
b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
c) Relevant <i>Road / Asset Opening Permit</i> fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
d) The owner/developer must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a <i>final occupation certificate</i> or occupation of the development (whichever is sooner).
e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

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

60.

Traffic Management

Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

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

Condition	
61.	Traffic Management All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times. Condition Reason: To ensure construction traffic is appropriately managed and any requirements of relevant external agencies are met.
62.	Stormwater Drainage Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier. The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter. Condition Reason: To control and manage stormwater run-off during excavation/construction so as not to adversely impact neighbouring properties and Council's stormwater assets.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE	
Condition	
63.	Occupation Certificate Requirements An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> . Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
64.	Post-construction Dilapidation Report A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate. The dilapidation report shall detail whether: <ul style="list-style-type: none">(a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and(b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided. Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.

	Condition
65.	<p>Fire Safety Certificate</p> <p>A single and complete <i>Fire Safety Certificate</i>, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
66.	<p>Structural Certification</p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i>. A copy of which is to be provided to Council.</p> <p>Condition Reason: To ensure the structural adequacy of the building and works.</p>
67.	<p>Sydney Water Certification</p> <p>A <i>section 73 Compliance Certificate</i>, under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > <i>Building and developing</i> > <i>Developing your Land</i> > <i>Water Servicing Coordinator</i> or telephone 13 20 92.</p> <p>Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
68.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
69.	<p>Street and/or Sub-Address Numbering</p> <p>Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.</p> <p>If this application results in an additional lot, dwelling or unit, an application must be</p>

	Condition
	submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate. <i>Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.</i>
	Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.
70.	Noise Control Requirements & Certification A report or statement prepared by a suitably qualified and experienced person must be provided to the Principal Certifier and Council, which demonstrates that the noise from the development satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i> ; Environment Protection Authority Noise Policy for Industry and the conditions of this development consent. Condition Reason: To protect the amenity of the surrounding area and residents.
71.	Swimming Pool Safety Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the <i>Swimming Pools Act 1992</i> ; the <i>Swimming Pools Regulation 2018</i> and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools)). Condition reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.
72.	Swimming Pool Safety A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the <i>Swimming Pools Regulation 2018</i> , detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times. Condition reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area prior to use.
73.	Swimming Pool Safety The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the <i>Swimming Pools Act 1992</i> . The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au . Registration must be made prior to the issue of an Occupation Certificate for the pool and a copy of the NSW Swimming Pool Certificate of Registration must be forwarded to the Principal Certifier and Council accordingly. Condition reason: To ensure registration of the swimming pool/spa in accordance with relevant legislation.
74.	Council's Infrastructure, Vehicular Crossings & Road Openings The owner/developer must meet the full cost for a Council approved contractor to: a) Reconstruct a full width concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, to Council's specifications and requirements.

Condition
b) Reconstruct kerb and gutter for the full site frontage except opposite the vehicular entrance and exit points, to Council's specifications and requirements.
c) Carry out a minimum 0.5m wide full depth asphalt adjustment from the lip of the gutter along the full site frontage, to Council's specifications and requirements.
d) Reconstruct a 1.8m wide concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.

Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.

75.

Council's Infrastructure, Vehicular Crossings & Road Openings

Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.

76.

Council's Infrastructure, Vehicular Crossings & Road Openings

All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:

- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
- b) Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.

77.

Council's Infrastructure, Vehicular Crossings & Road Openings

	Condition
	<p>The naturestrip upon Council's footway shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.</p>
	<p>Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.</p>
78.	<p>Survey Infrastructure – Restoration</p> <p>Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey mark must be prepared by a Registered Surveyor and submitted to the appointed certifying authority and the Council prior to the issue of an occupation certificate.</p> <p>The documentary evidence is to consist of a letter Signed by a Registered Land Surveyor confirming that all requirements requested under the Surveyor-General's Approval for Survey Mark Removal under condition "Survey Infrastructure – Identification and Recovery" have been complied with.</p> <p>Condition Reason: To ensure the development satisfies requirements with regards to the Preservation of Survey Infrastructure (POSI) under Section 24 of the Surveying and Spatial Information Act 2002.</p>
79.	<p>Sydney Water</p> <p>A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).</p> <p>Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to the issuing of an Occupation Certificate.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements with regards to any upgrade/adjustment of Sydney Water's assets.</p>
80.	<p>Carparking</p> <p>The proposed carpark shall be finished in a manner fit for its intended use. The car spaces shall be formalised with line-marking and numbering/labelling with such works completed prior to the issuing of an occupation certificate.</p> <p>Condition Reason: To ensure the completed carpark is fit for purpose and ready for occupation.</p>
80A.	<p>Traffic signal system</p> <p>A traffic signalling system shall be installed for this development within and at the entrance to the basement carpark at a suitable location to the satisfaction of the Principal Certifier.</p> <ul style="list-style-type: none">• The traffic signalling system must comply with the following minimum requirements:• The traffic signalling system shall be set default to green for vehicles entering

Condition
the carpark <ul style="list-style-type: none"> • The traffic system must display when the carpark is full to avoid vehicles entering the carpark and then reversing up the driveway. • The traffic system must display when a vehicle is on the ramp exiting the property. • The traffic signalling system must be installed and operational prior to occupation of the development.

Condition Reason: To minimise the potential for queuing extending onto the street and ensure the completed carpark is fit for purpose and ready for occupation.

81.

Stormwater Drainage

A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that any onsite detention/infiltration system is maintained and that no works which could affect the design function of any detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
- c. Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.

Condition Reason: To ensure stormwater run-off is effectively managed for the life of the development.

82.

Stormwater Drainage

A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

- Finished site contours at 0.2 metre intervals;
- The location of any detention basins/tanks with finished surface/invert levels;
- Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
- Details of any infiltration/absorption systems; and
- Details of any pumping systems installed (including wet well volumes).

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

Condition	
83.	Stormwater Drainage
	<p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.</p>
84.	Waste Management
	<p>Prior to the occupation of the development, the owner or applicant is required to contact Council's Strategic Waste Team, to make the necessary arrangements for the provision of waste services for the premises.</p> <p>Condition Reason: To ensure adequate waste management for the life of the development.</p>
85.	Waste Management
	<p>The waste storage areas shall be clearly signposted.</p> <p>Condition Reason: To ensure adequate waste management for the life of the development.</p>
86.	Landscape Certification
	<p>Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the landscape plans approved under Condition 1.</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>

OCCUPATION AND ONGOING USE

Condition	
87.	Use of parking spaces
	<p>The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.</p> <p>Condition Reason: To ensure that adequate parking facilities to service the development are provided on site, and to prevent leasing out of car spaces to non-residents.</p>
88.	Management of Strata parking on-site
	<p>A <i>Strata Parking Management Plan</i> must be developed and implemented for the</p>

Condition
development, which includes strategies and measures to 'self-manage' resident and visitor parking within the development.
Strategies and measures may include: <ul style="list-style-type: none"> • Adoption of parking by-laws; • Installation of suitable barriers, bollards, low-height fencing and gates; • Installation of signage and notices; • Intercom or key card systems; • Security systems and security personnel; • Enforcement processes and provisions to be implemented by the Owners Corporation/Strata Management
Condition Reason: To ensure that on-site parking is managed appropriately, and is for the use of occupants or visitors of the development only.
<p>89. Fire Safety Statement A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i>, and in accordance with the <i>Fire Safety Schedule</i> for the building.</p> <p>The <i>Fire Safety Statement</i> is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the <i>Fire Safety Schedule</i>.</p> <p>A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
<p>90. External Lighting External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>
<p>91. Stormwater Detention/Infiltration System Any detention areas/infiltration systems must be regularly cleaned and maintained to ensure it functions as required by the design.</p> <p>Condition Reason: To ensure adequate stormwater management for the life of the development.</p>
<p>92. Residential Parking Permits All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.</p> <p>Condition Reason: To ensure the development does not adversely impact the on-street parking demand.</p>
<p>93. Residential Parking Permits</p>

Condition
A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street resident parking permits. Condition Reason: To ensure the development does not adversely impact the on-street parking demand.

**DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES**

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

The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.

Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.

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

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

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DURING DEMOLITION WORK

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

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf) [https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf]. The consent should be read together with the [Conditions of development consent: advisory notes](https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf) and Randwick City Council Advisory notes (below) to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Advisory Notes:

Compliance with Environmental Planning and Assessment Act 1979:

The requirements and provisions of the Environmental Planning and Assessment Act 1979; and Environmental Planning and Assessment Regulation 2021 and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, must be complied with at all times.

Failure to comply with these legislative requirements is an offence, which may result in the commencement of legal proceedings and penalties up to \$5 million; or issue of a penalty notice (up to \$6,000) and/or the service of a Notice and Order by Council.

Building Code of Australia:

In accordance with the requirements of the Environmental Planning and Assessment Act 1979, building works (including associated demolition and excavation works) must not be commenced until:

- A Construction Certificate has been obtained from a (private-sector or Council) Registered Certifier,
- A Registered Certifier must be appointed as the 'Principal Certifier' for the development to undertake necessary inspections and issue an occupation certificate,
- Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.

Building Code of Australia:

The Construction Certificate plans and associated specifications must comply with the relevant provisions of the National Construction Code - Building Code of Australia (BCA).

The assessment of this development application does not include an assessment under the BCA and details of compliance with the relevant provisions of the BCA and conditions of development consent are to be provided in the plans, specifications and documentation for the Construction Certificate.

Compliance with development consent:

Please note that the development and all building work must be carried out fully in accordance with the development consent and conditions of consent.

It is an offence to carry out any unauthorised development or building work or to carry out any development or building work that is not in accordance with Council's development consent, which may result in a penalty up to \$5 million and \$110,000 respectively. Alternatively, Council may issue a penalty infringement notice (for up to \$6000) for each offence.

Council may also serve an Order requiring the demolition/removal of unauthorised building work or to require full compliance with Council's development consent.

S4.55:

Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out any variations to the approved development. It is an offence to carry out variations to the development without obtaining the necessary consent, which may result in regulatory action and penalties.

Occupation Certificate:

An occupation certificate must be obtained from the Principal Certifier, prior to occupation of the new building work or part of a building (including alterations and additions) or, a change of building use, as required by the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. Failure to obtain the required occupation certificate is an offence and is subject to a maximum penalty of up to \$110,000 or the issue of a penalty infringement notice up to \$6,000.

Other Approvals:

A separate application must be submitted to and be approved by Council prior to commencing any of the following activities:

- *Install or erect any construction site fencing, hoardings or site structures on Council land,*
- *Operate a crane or hoist goods or materials (including operation of a concrete pump) over a footpath or road,*
- *Placement of a waste skip or any other container or article on Council land,*
- *Discharging site stormwater or groundwater to Council's drainage system or street gutter, and*
- *Other activities which require approval under the Local Government Act 1993 or Roads Act 1993.*

For further information please contact Council on 1300 722 542.

Noise Impacts:

Noise from the development must not cause an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and the relevant requirements of the Protection of the Environment Act 1997 and associated Regulations must be complied with at all times.

Dividing Fences:

Any approval for fences on side boundaries common to other private properties is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the Dividing Fences Act and if applicable, you are advised to consult with the owners of the adjoining premises in this regard.

Access to adjoining land, encroachments and work affecting other premises:

This consent does not authorise any trespass, encroachment or carrying out of any works upon any adjoining land or building whether private or public. Where any access, underpinning, shoring or any other works are proposed to be carried out upon any adjoining land (including work affecting party walls, common roof construction or any other building works on or adjacent to the site boundaries), the owner/builder must obtain:

- a) the consent of the owners of the adjoining land to access, carry out works or encroach upon their land, or otherwise affect an easement, right-of-way or other restriction on the certificate of title, or*
- b) an access order under the Access to Neighbouring Land Act 2000, or*
- c) an easement under section 88K of the Conveyancing Act 1919, or*
- d) an easement under section 40 of the Land and Environment Court Act 1979 as appropriate.*

Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

Public Utilities:

Prior to commencing any works, the owner/builder should contact Before You Dig on www.bypda.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.

Civil Works:

Written approval must be obtained from Council prior to undertaking any works on Council land in accordance with section 138 of the Roads Act 1993.

Disability Discrimination Act:

The applicant/owner is advised that this approval does not guarantee compliance with the provisions of the Disability Discrimination Act 1992 and the applicant should therefore consider their liability under the Act. In this regard, the applicant is advised that compliance with the requirements of the Building Code of Australia and Australian Standard 1428.1 - Design for Access and Mobility does not necessarily satisfy the objectives of the Disability Discrimination Act 1992.

Building Design and Compliance Declarations:

The relevant requirements of the Design and Building Practitioners Act 2020 must be complied with, including requirements relating to regulated designs of building work, registered design and building practitioners and compliance declarations.

Underground Assets:

Underground assets (eg pipes, cables etc) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design

of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Council Infrastructure:

The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

Tree Management:

Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.

Common Boundary Wall (where applicable):

The Applicant is to meet all requirements of NSW Land Registry Services as applicable in regard to any required vertical or horizontal extension of the cross easements for support over the common party wall. Confirmation of these requirements should be obtained from a registered surveyor.

Swimming Pool Fencing (where applicable):

Council's assessment of this application does not include an assessment of compliance with the Swimming Pool Act 1992. All pool barriers, fences and structures within properties containing a swimming pool must comply with the requirements of the Swimming Pool Act 1992, BCA and relevant Australian Standards. Details of compliance with the Swimming Pool Act 1992, Building Code of Australia and relevant Standards must be included in the Construction Certificate to the satisfaction of the Certifier for the development.

Damage to adjoining/nearby land:

All demolition, excavation and building work should be carried out in a safe and professional manner and not result in damage to other buildings or property. In the event of any damage being caused (or alleged to have been caused) to other buildings or property, the principal building contractor or owner of the development should liaise with the owners of the affected properties to assess and rectify any damage which was a result of the demolition, excavation or building works, prior to completion of the development.

Licensed premises – Liquor Accord (where applicable):

Council encourages the operators of all Licensed Premises within the City of Randwick to become active members of the Eastern Beaches Liquor Accord. Accord membership not only demonstrates a commitment to the responsible service of alcohol principles of NSW liquor laws, but also provides the invaluable forum whereby Police, Council and licensed venue operators develop and implement harm minimisation strategies. For further details in respect to Accord membership please contact Council's Coordinator Regulatory Projects on 9093 6970.

Further Information:

Should you require further information on the determination of this development application, please contact Dean Lidis on 02 9093 6521.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means Randwick City Council.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means Randwick Local Planning Panel.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

the collection of stormwater,

the reuse of stormwater,

the detention of stormwater,

the controlled release of stormwater, and

connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Subdivision certificate means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

Subdivision works certificate means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

Sydney district or regional planning panel means Sydney Eastern City Planning Panel.

Development Application Report No. D3/26

Subject: 2 Kensington Road, Kensington (DA/1210/2025)

Executive Summary

Proposal: Partial demolition and associated excavation, structural repair and rectification work to existing brick fence for a place of public worship (Sacred Heart Monastery) (Heritage Item and Conservation Area).

Ward: West Ward

Applicant: Daughters of Our Lady of The Sacred Heart

Owner: The Trustees Daughts' Lady Sacred Heart

Cost of works: \$132,000.00

Reason for referral: The development involves partial demolition of a heritage item (I134)

Recommendation

- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1210/2025 for partial demolition and associated excavation, structural repair and rectification work to existing brick fence for a place of public worship (Sacred Heart Monastery) (Heritage Item and Conservation Area), at No. 2 Kensington Road, Kensington, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions 2 Kensington Road, Kensington (DA/1210/2025)

D3/26

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves the partial demolition of a heritage item (I134).

The proposal seeks development consent for partial demolition and associated excavation, structural repair and rectification work to existing brick fence for a place of public worship (Sacred Heart Monastery) (Heritage Item and Conservation Area).

The proposed development was advertised and notified in accordance with the Randwick City Community Engagement Strategy. No submissions were received as a result of the notification process.

Pursuant to Schedule 5: Environmental Heritage, Part 1 & Part 2 of the Randwick Local Environmental Plan 2012, the subject site is a listed heritage item described as 'Our Lady of the Sacred Heart Convent' (reference number I134) and within the Sacred Heart Heritage Conservation Area (reference number C3). The site also adjoins other listed heritage items identified as 'Our Lady of The Rosary Church' (reference number I133) and 'Sacred heart Monastery and Chapel' (reference number I140).

The key issues associated with the proposal relate to the site's identification as a local heritage item and built form being demolished and/or retained as part of the proposal. The details of the heritage significant fabric and an assessment of the proposed works have been outlined in the comments provided by Council's Heritage Planner who has raised no objections to the proposed works, subject to conditions.

The subject site is zoned SP2 – Infrastructure under the Randwick Local Environmental Plan 2012. The purpose shown on the land zoning map includes “Educational Establishment” and “Place of Public Worship” as permissible forms of development. The proposal is consistent with the objectives of the zone and the existing use of the site as an ‘Educational Establishment’ and ‘Place of Public Worship’ is to be maintained without any significant adverse amenity or environmental impacts. Alternatively, the proposal results in the provision of improved amenity through replacement and restoration of dilapidated portions of the front fencing sited on the Kensington Road frontage. The proposed works eliminate potential safety risks exposing users and the public to dangers associated with the brick fence’s structural instability.

The proposed works are centered around the existing brick fencing lining the site’s front boundary at Kensington Road. The heritage context of the site has been considered, and the works have been proposed in respect of that context. Where possible, bricks are to be dismantled, cleaned and incorporated into the future use with no clear definition between existing and rectified fencing.

Overall, the proposal will contribute positively to Our Lady of The Sacred Heart Convent with provision of safe, stable and consistent infrastructure which supports the existing use and operation of the site as both an educational establishment and place of public worship in line with the public’s interest.

The proposal is recommended for approval subject to non-standard conditions that require heritage considerations relating to general heritage conservation and adaptation, reuse and recycling of traditional materials, and materials and finishes.

2. Site Description and Locality

The subject site is known as Our Lady of The Sacred Heart Convent and is legally described as Lot 102 in Deposited Plan 1289850. The site is located at 2 Kensington Road and is owned and operated by The Trustees Daughts' Lady Sacred Heart.

The site is an irregularly shaped allotment possessing dual street frontages to both Kensington Road (82.97m boundary) and Tunstall Avenue (123.08m boundary) with a total site area of 1.33 hectares. Primary vehicular and pedestrian access is achievable through access handles positioned at the Kensington Road boundary. These access handles are within close proximity to proposed area of works. Topographically the site slopes prominently towards Kensington Road with an approximate fall of 5m.

The surrounding area’s characteristics vary with a combination of SP2 Infrastructure, R2 Low Density Residential and R3 Medium Density Residential land uses (See Figure 2). The site is directly adjoined by educational establishments to the north being St Joseph’s Roseberry Kensington Campus and Our Lady of The Sacred Heart College. The site also adjoins places of public worship to the south and east which are simultaneously heritage listed items identified as ‘Our Lady of The Rosary Church’ (reference number I133) and ‘Sacred heart Monastery and Chapel’ (reference number I140) (see Figure 3).

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Figure 1: Heritage Map – Subject site dashed blue listed I134

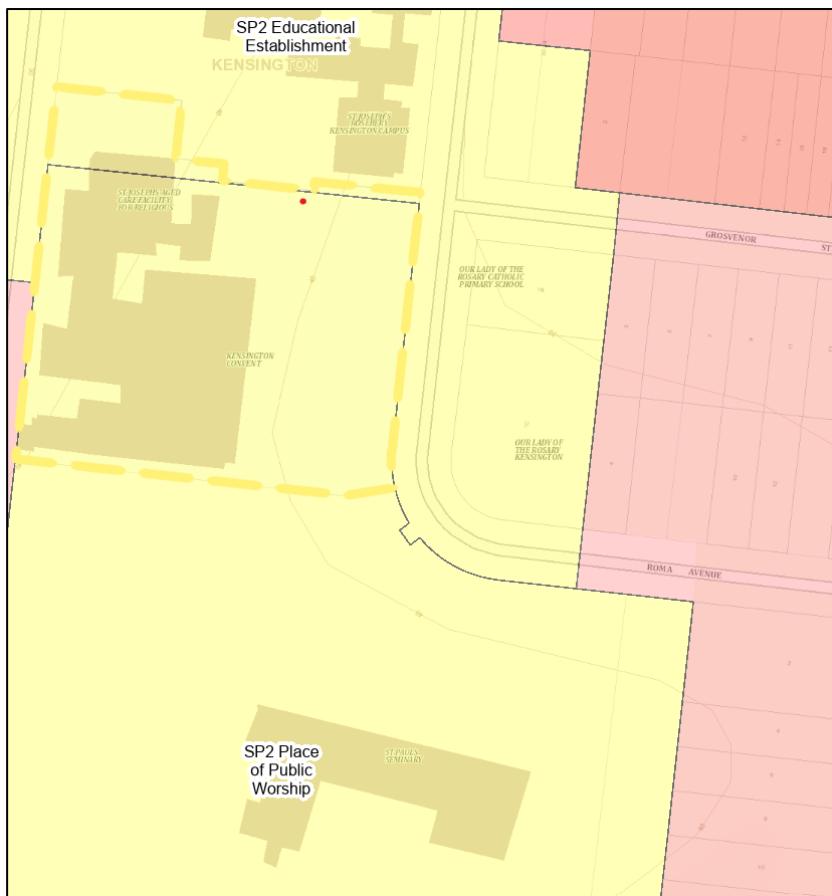


Figure 2: Land Zoning Map – Subject site dashed yellow



Figure 3: Aerial view of site – Proposed works area highlighted in blue

3. Relevant history

DA/506/2017 - Sydney Eastern City Planning Panel issued approval for staged development including concept plan for the redevelopment of existing residential aged care facility at the Daughters of Our Lady of the Scared Heart Kensington Campus including construction of a new 4 storey residential aged care facility providing 51 beds, car parking for 12 vehicles, offices, activity areas and associated landscape garden; and reconfiguration of the existing facilities, repurposing of current aged care rooms and establish linkage to existing development on the site (Heritage Item and Heritage Conservation Area).

DA/81/2019 – Approval issued for alterations to the existing nursing home including fire safety upgrade, internal refurbishment, new air conditioning condenser units, repair roof skylights, alterations to external balcony areas/balustrades and ground floor entry door fronting Tunstall Avenue (Heritage Item and Conservation Area).

CC/277/2019 – Construction Certificate issued for alterations to the existing nursing home including fire safety upgrade, internal refurbishment, new air conditioning condenser units, repair roof skylights, alterations to external balcony areas/balustrades and ground floor entry door fronting Tunstall Avenue Heritage Item and Conservation Area.

DA/279/2022 – Approval issued for subdivision of the site to create two (2) Torren's title allotments (Heritage Item & Heritage Conservation Area).

SC/19/2023 – Subdivision Certificate issued to create 2 Torrens Title Allotments (Heritage Item & HCA).

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4. Proposal

The proposal seeks development consent for partial demolition and associated excavation, structural repair and rectification work to existing brick fence.

Note: partial demolition of the existing fence has already occurred due to safety concerns. Council's Compliance team are aware of these works and have been in consultation with the Applicant/Owner. The proposal seeks consent for any further demolition works and the reconstruction of the fence.

The proposal involves relatively minor demolition work, excavation and repair of the brick fence lining Kensington Road. As per heritage requirements and as indicated in the submitted plans and SEE all salvageable material is to be reused and recycled to help form the rectified fence. Approximately 17m of fencing is proposed for removal and restoration, this portion of fencing is shown below in Figures 4 & 5 as dashed in grey.

Images of existing fence to be rectified illustrated below in Figures 6 – 9.

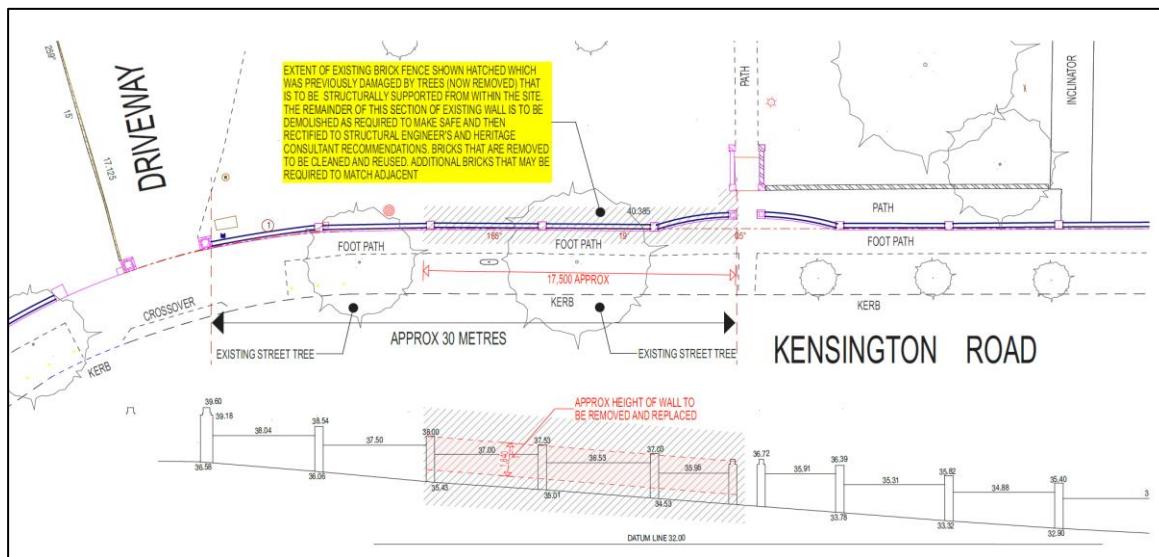


Figure 4: Proposed Demolition Plan & Fence location

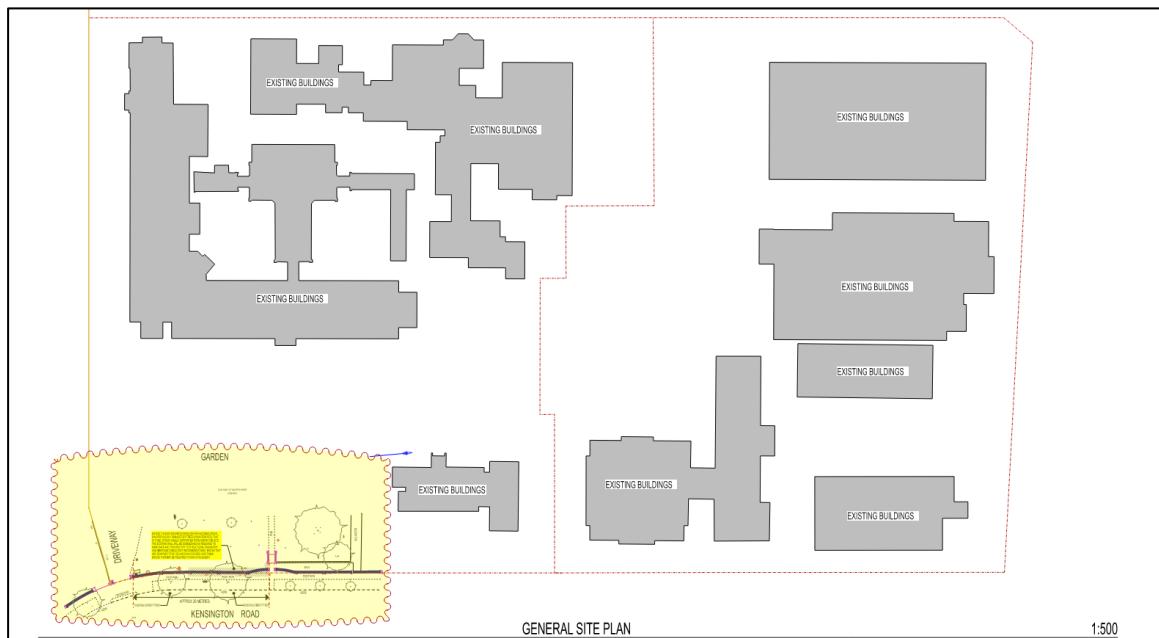


Figure 5: Site Plan – 2 Kensington Road, Kensington

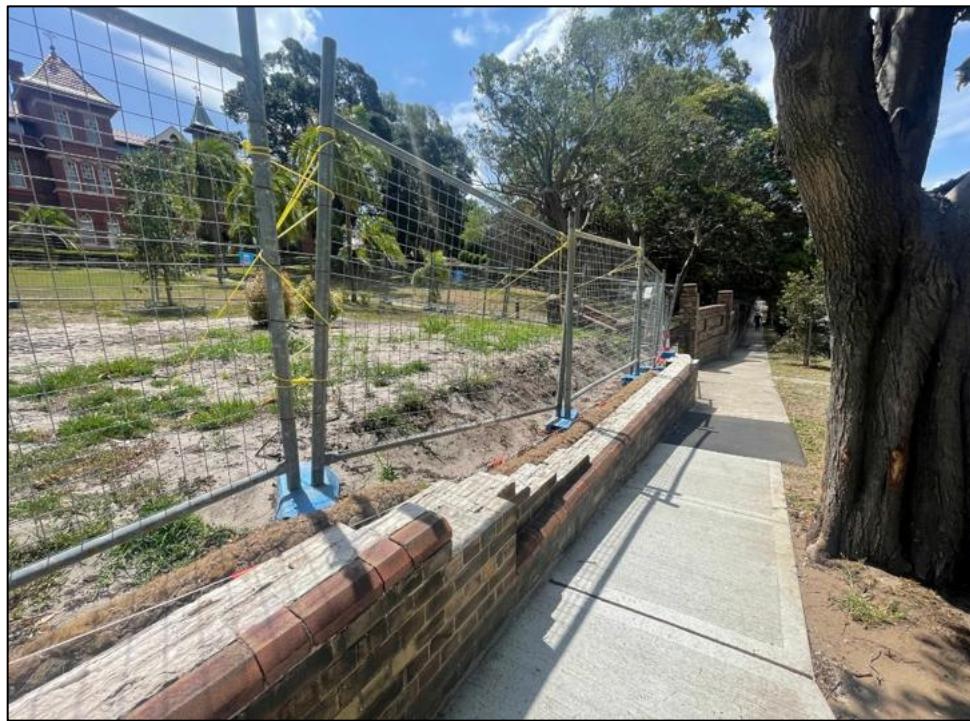


Figure 6: Portion of subject fence – partially demolished

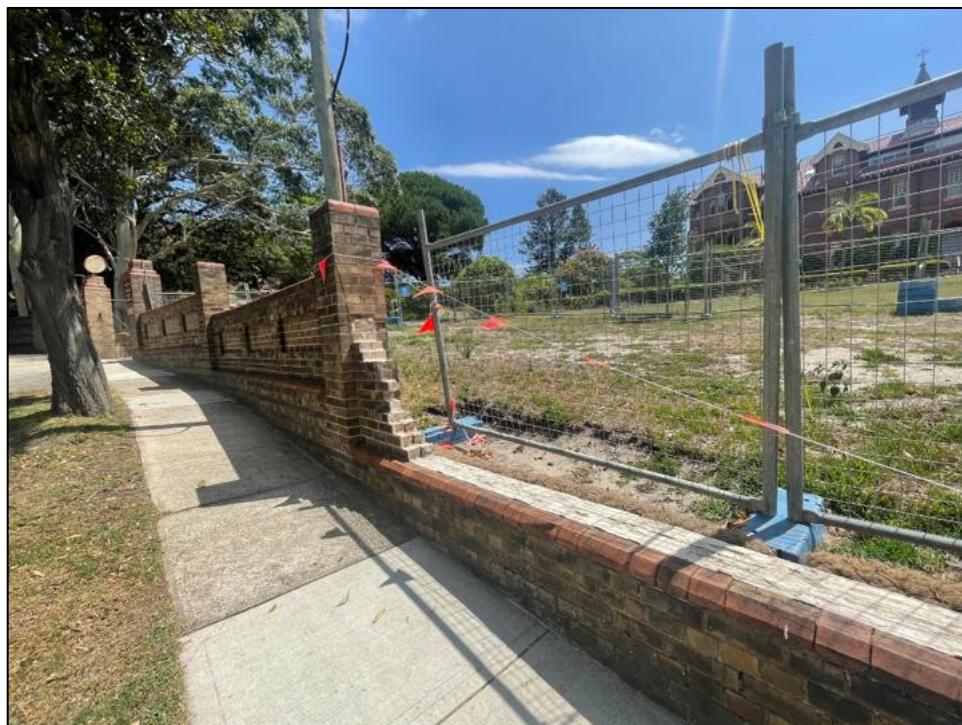


Figure 7: Portion of subject fence – partially demolished

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Figure 8: Streetscape view of 2 Kensington Rd, Kensington

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

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

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

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

6.2. SEPP (Transport and Infrastructure) 2021

Chapter 3 – Educational establishments and childcare facilities

Pursuant to section 3.36 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)*, development for the purpose of a school may be carried out by any person with consent on land in a prescribed zone. The SP2 zone is identified as a prescribed zone under section 3.34 of the T&I SEPP.

Subsection 3.36(6) of the T&I SEPP states:

“Before determining a development application for development of a kind referred to in subsection (1), (3) or (5), the consent authority must take into consideration –

- (a) *the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and*
- (b) *whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.”*

The proposed development effectively contributes to improved and sustained use of the site as both a place of public worship and an educational establishment. The proposal satisfies the quality design criteria outlined under Schedule 8 of the SEPP.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

Chapter 4 of the Resilience and Hazards SEPP applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. Clause 4.6 of the SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

The application involves alterations and additions to an existing place of public worship. Noting that the site has historically been used for educational and spiritual purposes, the possibility of contamination is unlikely, and the site is considered suitable for the proposed development.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned SP2 – Infrastructure (Place of Public Worship & Education Establishment) under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The SP2 Infrastructure zoning objectives are as follows:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- To facilitate development that will not adversely affect the amenity of nearby and adjoining development.
- To protect and provide for land use for community purposes.

The proposal is consistent with the specific objectives of the zone in that the proposal will support the ongoing use of the site as a place of public worship and an educational establishment which serves the needs of the local community. The rectification works are primarily motivated by ongoing safety concerns arising from the fencing's structural instability. Consequently, the proposal serves to enhance accessibility to and from the site.

There are no development standards for lot size, floor space ratio, or building height under RLEP 2012 applying to the subject site. However, it is noted that the proposal doesn't seek alteration of the building envelope or design; rather the works are purely remedial intending to enhance accessibility and safety while maintaining heritage significance.

6.4.1. Clause 5.10 - Heritage Conservation

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

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

The site is a locally listed heritage item pursuant to the Randwick Local Environmental Plan 2012 - Amendment No. 9 (RLEP 2012). The heritage item is known as 'Our Lady of the Sacred Heart Convent' (reference number I134) at 2 Kensington Road, Kensington, Lot 102 DP 1289850.

As the proposal involves alterations to a site which is listed as a heritage item, provision (2)(a)(i) of Clause 5.10 under the RLEP 2012 (Amendment No. 9) apply to the proposed development.

Council's Heritage Planner has undertaken an assessment of the proposal and potential impacts that would be associated with an approval. The key considerations resulting from the heritage assessment are the recyclable portions of the demolished fence and the proposed materials and finishes used to construct the proposed fence. As such, there is the imposition of suitable conditions to mitigate offences against the heritage item and/or heritage conservation area.

Council's Heritage Planner raised no objection to the proposed works, consequently the proposal is deemed compliant with clause 5.10 of RLEP 2012. Refer to referral comments from Council's Heritage Planner in **Appendix 1** of this report.

6.4.2. Clause 6.12 – Development Requiring the Preparation of a Development Control Plan

Clause 6.12(1) of Randwick Local Environmental Plan 2012 outlines the objectives associated with site specific development control plans. As the development has a site area exceeding 10,000m², provision (2)(a) is applicable to the proposal.

However, pursuant to Clause 6.12 provision (3)(c) the proposed development is of a minor nature and is consistent with the objectives of the SP2 zoning on which the land is situated.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

The relevant provisions of the DCP are addressed below:

Part B2 – Heritage

The proposed works will maintain the significance of the existing heritage item of the 'Our Lady of the Sacred Heart Convent' (reference number I134) and will comply with the relevant objectives of control. The proposal will continue to conserve the heritage significance of the building including the associated fabric, settings and views of the development. Council's heritage planning officer has no objections to the proposed development.

Refer to discussion by Council's Heritage Planner at Appendix 1 of this report which addresses the relevant controls.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received during the notification period.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

That the application for partial demolition and associated excavation, structural repair and rectification work to existing brick fence for a place of public worship (Sacred Heart Monastery) (Heritage Item and Conservation Area) be approved (subject to conditions) for the following reasons:

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

- The proposal is consistent with the specific objectives of the SP2 - Infrastructure zone in that it will result in the delivery of infrastructure that will support the exiting use and operations of the site and as educational establishment.
- Subject to conditions, the proposal will not result in any unreasonable adverse amenity and/or heritage impacts.
- The development enhances the visual quality of the public domain/streetscape.
- The proposed development will make a positive contribution to the site in that it will facilitate greater accessibility.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

- The subject site contains a heritage item, known as 'Our Lady of the Sacred Heart Convent' (Item no. 134).
- The site is located within the Sacred Heart HCA (C3).

Proposal

Partial demolition and associated excavation, structural repair and rectification work to existing brick fence.

Three panels of the brick fence fronting Kensington Road are to be reinforced and rebuilt to match the existing fence.

Submission

- P00376961 - SK.100 - Proposed Rectification Detail - 2 Kensington Road Kensington
- D05928233 - Heritage Impact Statement - 2 Kensington Road Kensington

Controls

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

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

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

Internal comments

- A site inspection was undertaken on 16 January 2025. The three panels of the brick fence related to this DA were observed as partially demolished, prior to the inspection and determination of this DA.

Recommended conditions

The following conditions should be included in any consent:

1. General heritage works

- All development, conservation, and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- The proposed works are to be carried out in a manner that minimises damage to, or demolition of, the existing brick fence remaining at the site.
- The three portions of the fence to be reinforced and rebuilt, must be constructed identical to the previous brick fence. i.e. fence height, niches, posts and brick detailing.

2. Salvage, Reuse and Recycling of Traditional Building Materials

- A salvage plan shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that the bricks are carefully removed and stored, reused, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.
- Salvaged traditional building materials surplus to the requirements of this project including stone, bricks, structural timber, and joinery must not be scrapped and are to be reused or sold to an established dealer in second-hand heritage building materials. Documentation of the

salvage methodology must be submitted for the approval of Council prior to the commencement of demolition.

Condition Reason: To ensure that materials of significant heritage fabric are reused, sold or donated to facilitate conservation of other buildings.

3. Materials and finishes

- a) If new bricks are required to complete the works, they shall match the existing bricks in terms of colours, finishes, sizes, profile and properties. A sample of the new bricks must be provided to Council for review and approval prior to issuing of the Construction Certificate.

Details of any changes to the proposed colours, materials and textures to be submitted to and approved by Council's Coordinator Development Assessment/Manager Development Assessment, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

- b) The brickwork must not be rendered, painted or coated.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development, and complementary to the heritage conservation area.

Responsible officer: Braeden Lewis, Environmental Planning Officer

File Reference: DA/1210/2025

Development Consent Conditions



DA No:	DA/1210/2025
Property:	2 Kensington Road, KENSINGTON NSW 2033
Proposal:	Partial demolition and associated excavation, structural repair and rectification works to existing brick fence for a place of public worship (Sacred Heart Monastery) (Heritage Item and Conservation Area).
Recommendation:	Approval

GENERAL CONDITIONS

	Condition			
1. Approved plans and documentation				
Development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent (including any deferred commencement conditions):				
Plan No.	Issue No.	Drawn by	Dated	Received by Council
DA02	E	MMA Architects	29/01/2026	29/01/2026

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

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

2. **General Heritage Works**

- i) All development, conservation, and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013.
- ii) The proposed works are to be carried out in a manner that minimises damage to, or demolition of, the existing brick fence remaining at the site.
- iii) The three portions of the fence to be reinforced and rebuilt must be constructed identical to the previous brick fence. i.e. fence height, niches, posts and brick detailing.

Condition Reason: To ensure sustained heritage conservation.

3. **Salvage, Reuse and Recycling of Traditional Building Materials**

- i) A salvage plan shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that the bricks are carefully removed and stored, reused, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.
- ii) Salvaged traditional building materials surplus to the requirements of this project including stone, bricks, structural timber, and joinery must not be scrapped and are to be reused or sold to an established dealer in second-hand heritage building materials. Documentation of the salvage methodology must be

Condition	
submitted for the approval of Council prior to the commencement of demolition.	
	Condition Reason: To ensure that materials of significant heritage fabric are reused, sold or donated to facilitate conservation of other buildings.
4.	<p>Materials and Finishes</p> <ul style="list-style-type: none"> If new bricks are required to complete the works, they shall match the existing bricks in terms of colours, finishes, sizes, profile and properties. A sample of the new bricks must be provided to Council for review and approval prior to issuing of the Construction Certificate. <p>Details of any changes to the proposed colours, materials and textures to be submitted to and approved by Council's Coordinator Development Assessment/Manager Development Assessment, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.</p> <ul style="list-style-type: none"> The brickwork must not be rendered, painted or coated. <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development, and complementary to the heritage conservation area.</p>

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition	
5.	<p>Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
6.	<p>Section 7.12 Development Contributions</p> <p>Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$132,000.00 the following applicable monetary levy must be paid to Council: \$1,320.00.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> <p>IDC = ODC x CP2/CP1</p> <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS</p>

Condition	
in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.	
Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au .	
Condition Reason: To ensure relevant contributions are paid.	
7.	<p>Building Code of Australia In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
8.	<p>Excavation Earthworks and Support of Adjoining Land Details of proposed excavations and support of the adjoining land and buildings are to be prepared and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
9.	<p>Security Deposits The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$5000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>

BEFORE BUILDING WORK COMMENCES

Condition	
10. Building Certification & Associated Requirements The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):	

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

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

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

11.

Construction Site Management Plan

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

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

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

A copy of the Construction Site Management Plan must be provided to the

Condition	
	Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.
	Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
12.	Construction Site Management Plan A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council. Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.
13.	Construction Noise & Vibration Management Plan Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies. Condition Reason: To protect the amenity of the neighbourhood during construction.
14.	Public Utilities The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority. Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.

DURING BUILDING WORK

Condition	
15.	Site Signage It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details: <ul style="list-style-type: none"> a) showing the name, address and telephone number of the principal certifier for the work, and b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and c) stating that unauthorised entry to the work site is prohibited. The sign must be— <ul style="list-style-type: none"> a) maintained while the building work is being carried out, and b) removed when the work has been completed. This section does not apply in relation to— <ul style="list-style-type: none"> a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

Condition							
16.	<p>Restriction on Working Hours Building, demolition and associated site works must be carried out in accordance with the following requirements:</p> <table border="1"> <thead> <tr> <th>Activity</th><th>Permitted working hours</th></tr> </thead> <tbody> <tr> <td>All building, demolition and site work, including site deliveries (except as detailed below)</td><td> <ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted </td></tr> <tr> <td>Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like</td><td> <ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted </td></tr> </tbody> </table>	Activity	Permitted working hours	All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted 	Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted
Activity	Permitted working hours						
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted 						
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted 						

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

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

17.

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

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

Condition
to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.
<i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i>
<p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.</p> <p>j) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>k) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6000 for further details.</p>

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

18.

Building Encroachments

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

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

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
<p>19. Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p>
Condition reason: Statutory requirement. To ensure the site is authorised for occupation.

Condition	
20.	<p>Council's Infrastructure, Vehicular Crossings and Street All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <ul style="list-style-type: none"> (a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors. (b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a <i>Pre-paid Works Application Form</i>, prior to issuing an occupation certificate, together with payment of the relevant fees. (c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee. (d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing. <p>Condition Reason: To ensure rectification of any damage to public infrastructure and that works are completed in accordance with Council's requirements with Council's approval.</p>

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition	
21.	<p>Demolition Work Plan A demolition work plan must be developed and be implemented for any demolition works in accordance with AS2601 (2001)- Demolition of Structures.</p> <p>The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.</p> <p>The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).</p> <p>A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.</p> <p>Condition reason: To ensure demolition of the work area carried out in accordance with the relevant standards and requirements.</p>

DURING DEMOLITION WORK

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

Development Application Report No. D4/26

Subject: 122-124 Marine Parade, Maroubra (DA/1187/2025)

Executive Summary

Proposal: Remediation works to the existing residential flat building and reconstruction of the enclosed balconies, including internal works, window replacement and facade upgrades (Clause 4.6 variation to FSR and Building Height).

Ward: Central Ward

Applicant: DR B A Unger-Graeber

Owner: The Owners - Strata Plan No. 21741

Cost of works: \$4,031,252.50

Reason for referral: The development involves a variation of more than 10% to development standards for Building Height and Floor Space Ratio

Recommendation

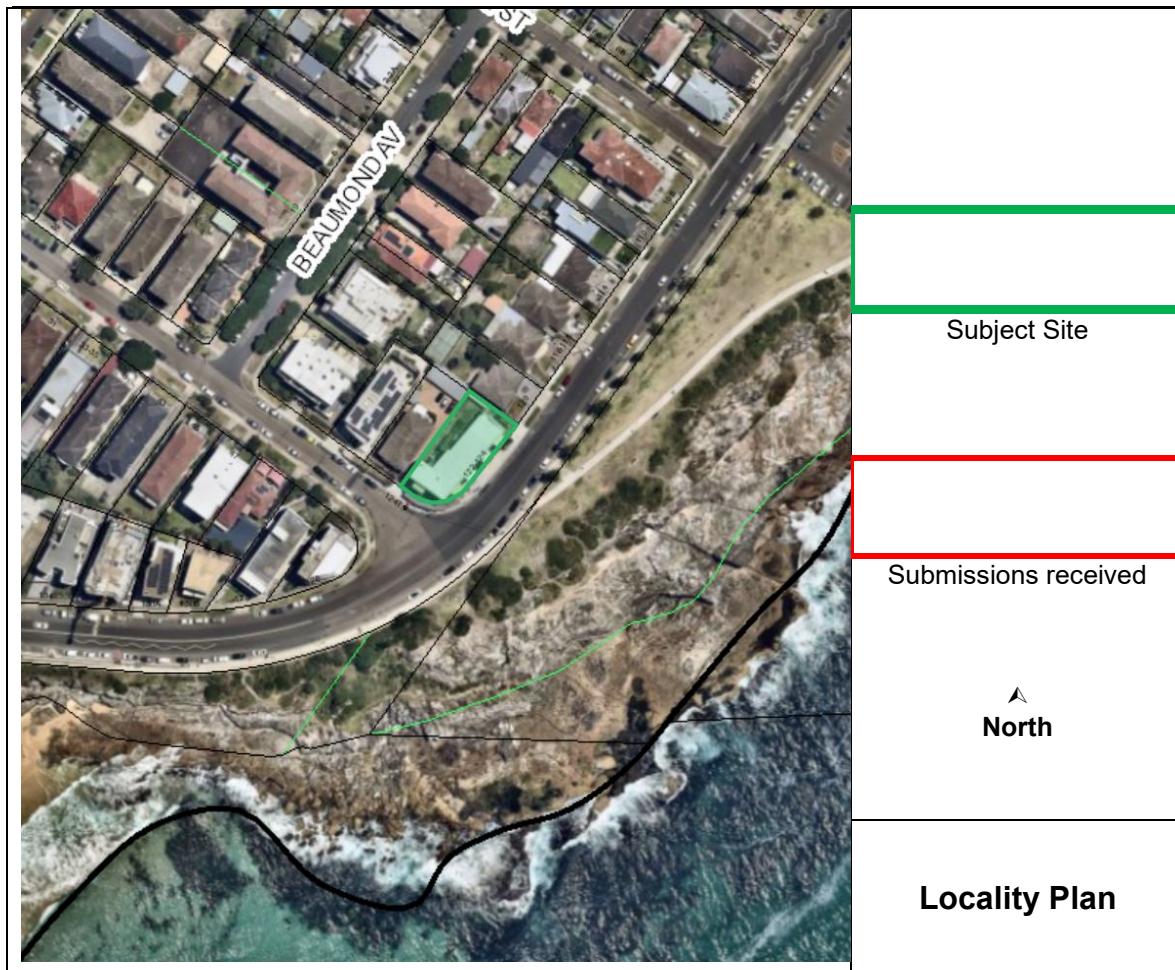
1. That the RLPP is satisfied that the applicant's written requests to vary the development standard relating to the height of buildings and floor space ratio development standards in Clause 4.3 and 4.4 of Randwick Local Environmental Plan 2012, have demonstrated that:
 - i. Compliance with the relevant development standard is unreasonable or unnecessary in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standard.
2. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 1187/2025 for remediation works to the residential flat building at No. 122-124 Marine Parade, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/1187/2025 - 122-124 Marine Parade, MAROUBRA NSW 2035 - DEV - Dr B A Unger-Graeber

D4/26

D4/26



1. Executive summary

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

- The development contravenes the development standards of height of buildings and floor space ratio by more than 10%.

The application seeks development consent for alterations and additions for remediation works to the existing residential flat building at 122-124 Marine Parade, Maroubra (*the subject site*).

The subject site is zoned R3 - Medium Density Residential under Randwick Local Environmental Plan 2012, under which the land use of "Residential flat buildings" is permissible with consent.

The key issue associated with the application relates to the height and floor space ratio, as there are proposed material changes and alterations for the balcony, not complying with the building height development standard (Clause 4.3), and the floor space ratio development standard (Clause 4.4) of *Randwick Local Environmental Plan 2012 (LEP)*. The applicant has submitted a Clause 4.6 request to vary the building height standard (Appendix 1) and floor space ratio standard (Appendix 2).

The proposed development generally maintains the fabric of the building. Due to this, a great amount of considerations under *Part C2 Medium Density Residential* of *Randwick Comprehensive Development Control Plan 2013 (RDCP 2013)* are not applicable to the proposed works, however the proposal is compliant with all applicable.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is identified as PT Lot 9 in DP7260 (being Lots 1-16 in Strata Plan 21741), 122-124 Marine Parade, Maroubra. The site is located on the corner of Marine Parade and Bond Street, located on the western side of Marine Parade and the northern side of Bond Street. To the west is Beaumont Avenue and to the north is Sackville Street.

The site is an irregular shaped allotment with a 29.585m splayed metre frontage to Marine Parade, a 23.114 metre splayed secondary frontage to Bond Street, a 20.115 metre north-eastern side boundary, a 39.625 metre north-western side boundary, and a total site area of 731.4m².

Existing on site is a four-storey mixed-use building comprising 3 shops from the corner around into Bond Street with 12 units above 2.5 levels. A detached laundry structure exists to the northern rear boundary.

The surrounding area is characterised by residential development, including dwelling houses and residential flat buildings. Adjoining the site to the north-east at 120 Marine Parade is a two-storey detached dwelling house and to the north-west of the site at 40 Bond Street is a 2-storey residential flat building.

The site is not listed as a Heritage Item or within a Heritage Conservation Area.



Figure 1: Front of Subject Site at intersection of Bond Street and Marine Parade

D4/26



Figure 2: Northeastern side of subject site fronting Marine Parade



Figure 3: Northeastern view of subject site from driveway facing lower ground courtyard



Figure 4: Northeastern view of subject site from driveway facing lower ground courtyard



Figure 5: Southwestern view of subject site from level 3

D4/26

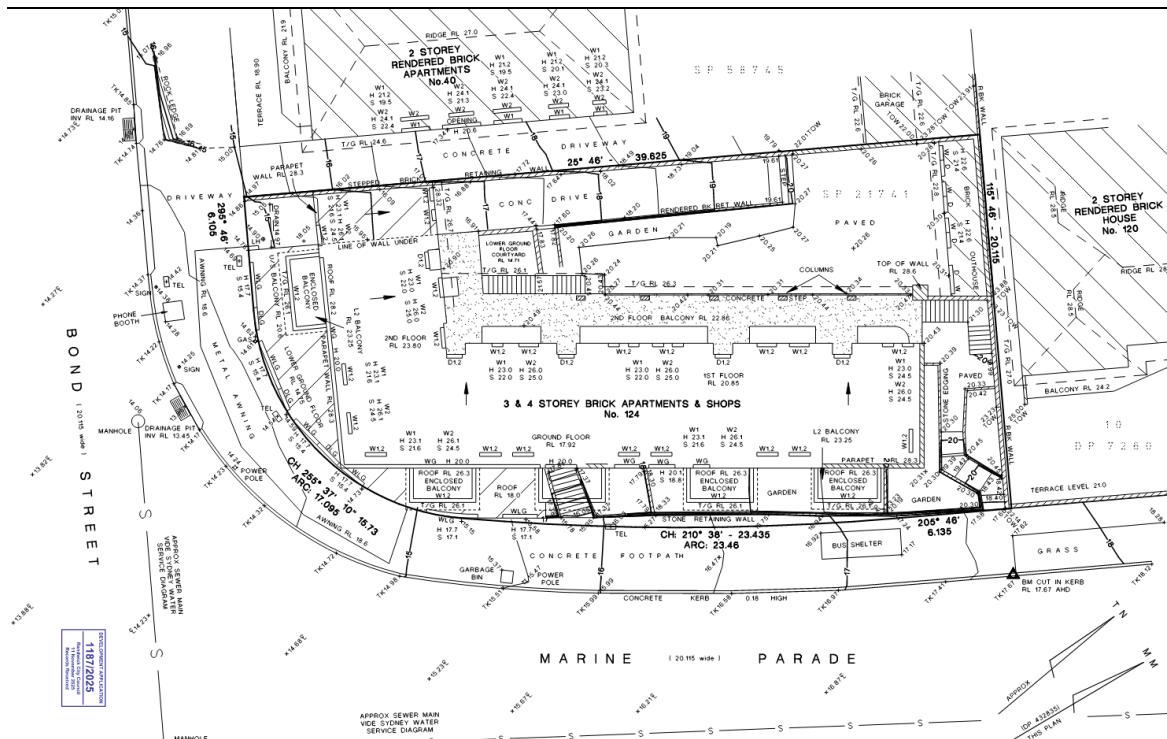


Figure 6: Survey Plan (Source Holger Beuthien - 07/05/2014)



Figure 7: Southern Aerial View of Subject Site (Source Nearmaps – 11/07/2025)



Figure 8: Northern Aerial View of Subject Site (Source Nearmaps – 11/07/2025)

3. Relevant history

DA/498/2018 proposed the demolition of all structures on site and construction of a new part 4 part 5 storey mixed use development comprising 3 retail premises, apartment storage and building services at ground floor level, 16 dwellings (1xstudio, 11x1 bedroom, 2x2 bedroom and 2x3 bedroom), basement parking for 16 cars, associated site and landscape works. The Application was refused on 12 December 2019 by the RLPP for the following reasons:

1. *The written consent of all land owners has not been provided. Therefore, by necessity, the development application must be refused.*
2. *The proposed development is non-compliant with the development standard for floor space ratio under Clause 4.4 of RLEP 2012 and the applicant's written request to vary the development standard is not satisfactory as it is based on an incorrect calculation of the floor space ratio and has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) of RLEP 2012. The written request therefore does not comply with Clauses 4.6(3) and 4.6(4) of RLEP 2012.*
3. *The proposed development will not be in the public interest because it is inconsistent with the objectives of the development standard for floor space ratio under Clause 4.4 of RLEP 2012 and the objectives for development within Zone R3 Medium Density Residential.*
4. *The proposal does not comply with the following parts of the Apartment Design Guide:*
 - *Parts 3D Communal and public open space;*
 - *3E Deep soil zones;*
 - *3F Visual Privacy and setbacks;*
 - *4A Solar and daylight access;*
 - *4D Apartment size and layout; and*
 - *4E Private open space and balconies.*
5. *The proposal fails to satisfy the relevant objectives of the R3 Medium Density zone under RLEP 2012 in relation to the desired future character of the locality and the protection of surrounding residential amenity.*
6. *Deleted.*
7. *The proposal does not provide the requisite car parking under Part B7 of the Randwick Comprehensive Development Control Plan 2013.*

8. *The proposal exceeds the maximum external wall height control under Part C2 of the Randwick Comprehensive Development Control Plan 2013.*

9. *The proposal fails to satisfy the view sharing objectives and controls under Part C2 of the Randwick Comprehensive Development Control Plan 2013, particularly noting the significant non-compliances with development standards and the ADG.*

10. *The accuracy of the interpolation of the existing ground level from which the building height has been measured is questionable. It appears part of the existing ground level adjoining the driveway had not been accounted for in the calculations. If so, the proposed building will exceed the height limit. No Clause 4.6 submission to vary the development standard for building height has been received.*



Figure 9: 3D views of DA/498/2018 (Source: AJ+C – 20/06/2018)

4. Proposal

The proposal seeks development consent for remediation works to the existing residential flat building and reconstruction of the enclosed balconies, where specifically, the proposed development includes the following:

General

- Remediation works to repair render, steel elements and beams in reinforced concrete
- Upgrade existing external loadbearing posts and/or columns supporting Unit 5
- Demolish and replace floor tiles to common areas.

Facade

- Strip existing paintwork from rendered external walls, patch render and/or re-render wall
- Patch, repair and render existing facework brickwork to courtyard facades
- Repair existing brickwork

Enclosed Balconies

- Demolish existing enclosed balcony slabs and reinstate new RC slab
- Demolish and reinstate enclosed balcony and exterior wall cladding

Windows

- Replace all existing residential windows
- Replace and install all existing window lintels
- Replace all existing skylights

Roofing and Level 03

- Remove existing roofs and provide new Colourbond finish roof sheeting, flashings, gutters and downpipes.

- Extend existing party walls between units to the underside of the roof
- Remove and replace existing ceilings and eaves.
- Reinstate polycarbonate sheeting above voids within existing roof.

Balustrades and Handrails

- Replace all balustrades and handrails with new balustrade and handrail systems

The proposed works are demonstrated in **Figures 10 – 30** below.

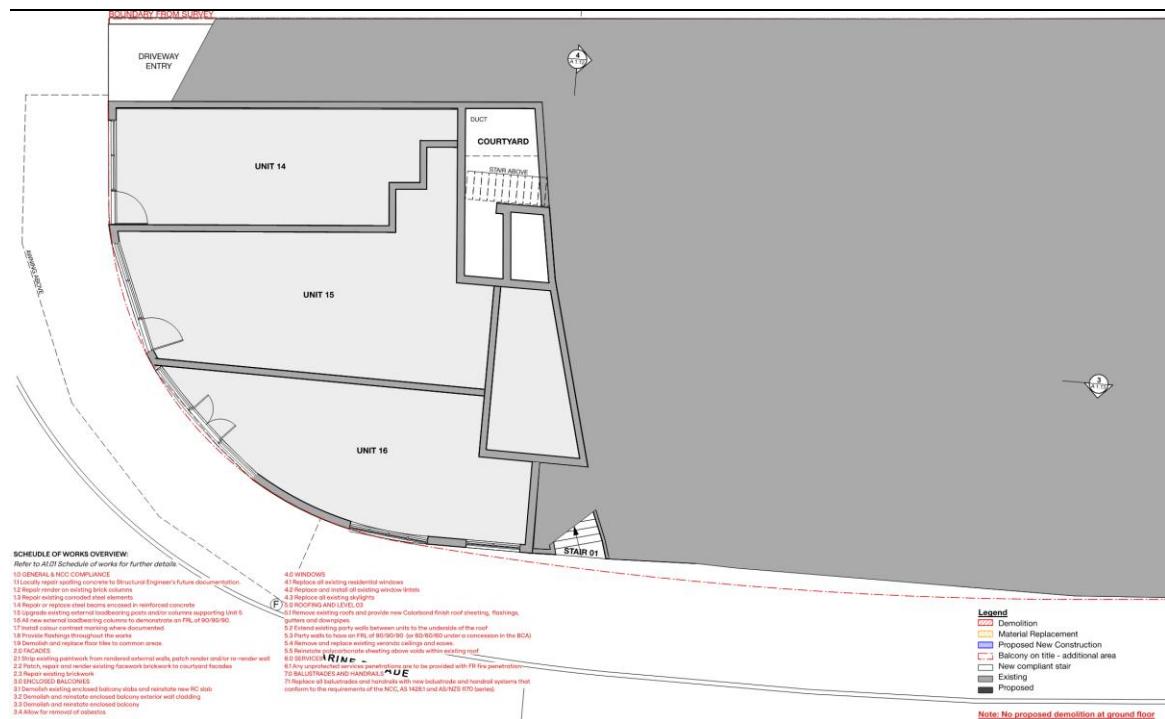


Figure 10: Ground Plan – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

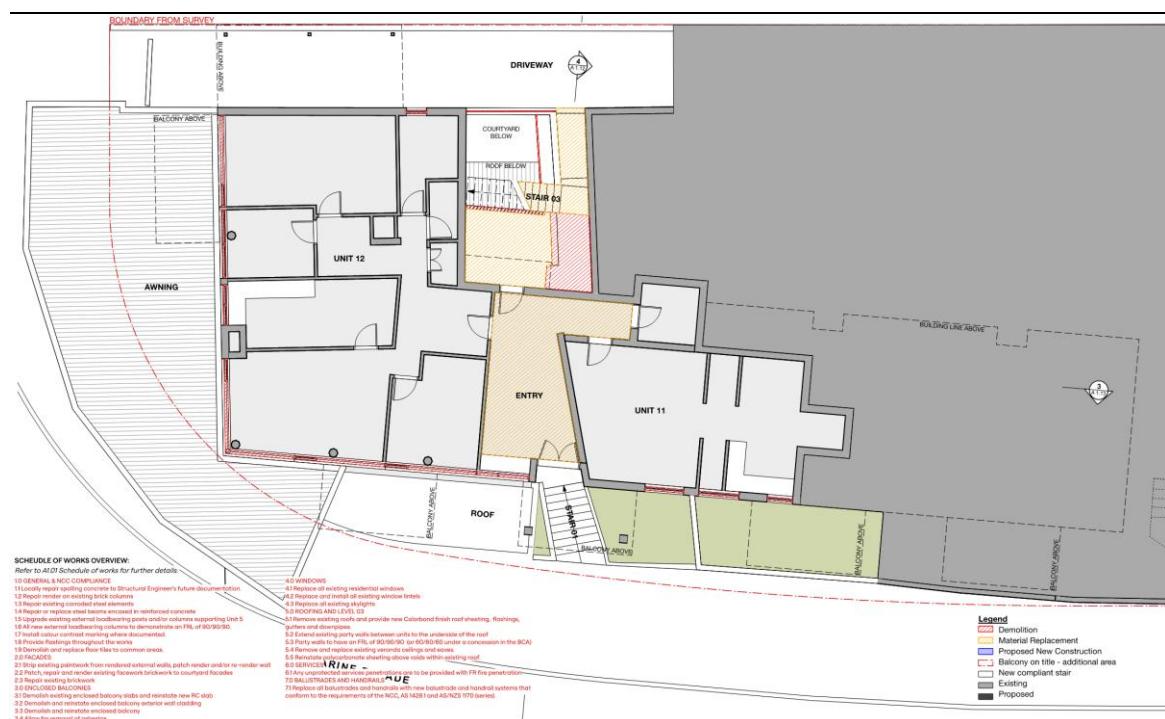


Figure 11: Level 01 Plan – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

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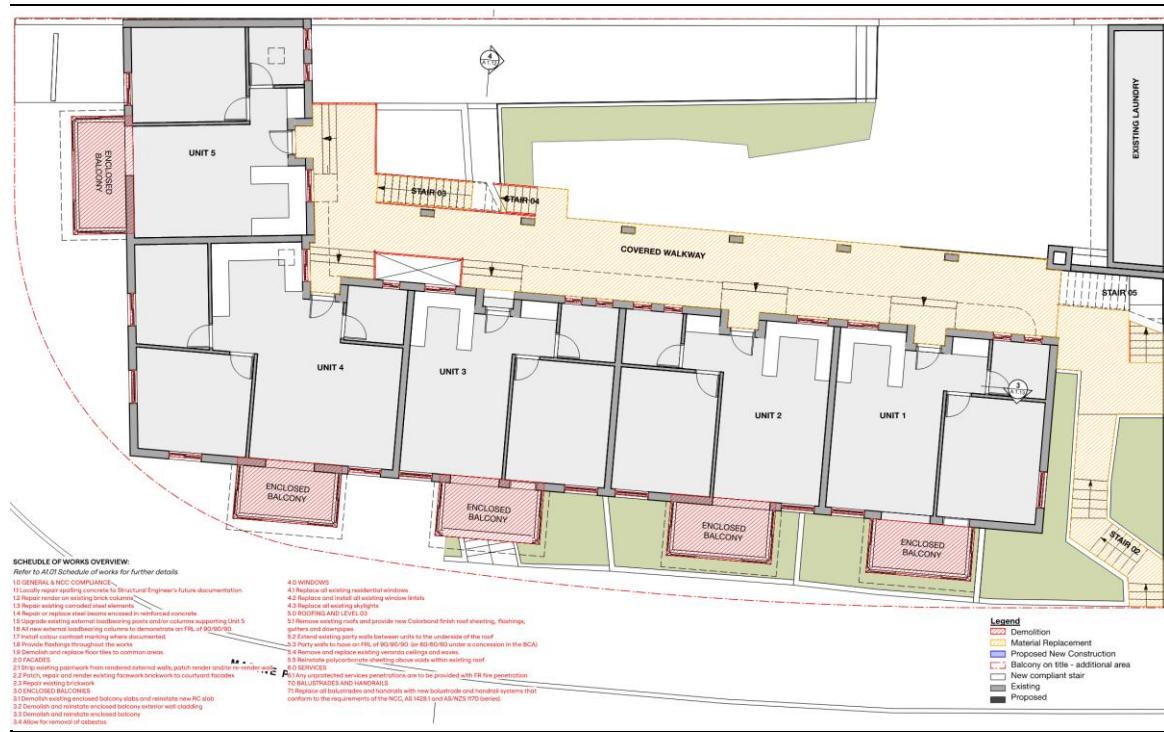


Figure 12: Level 02 Plan – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

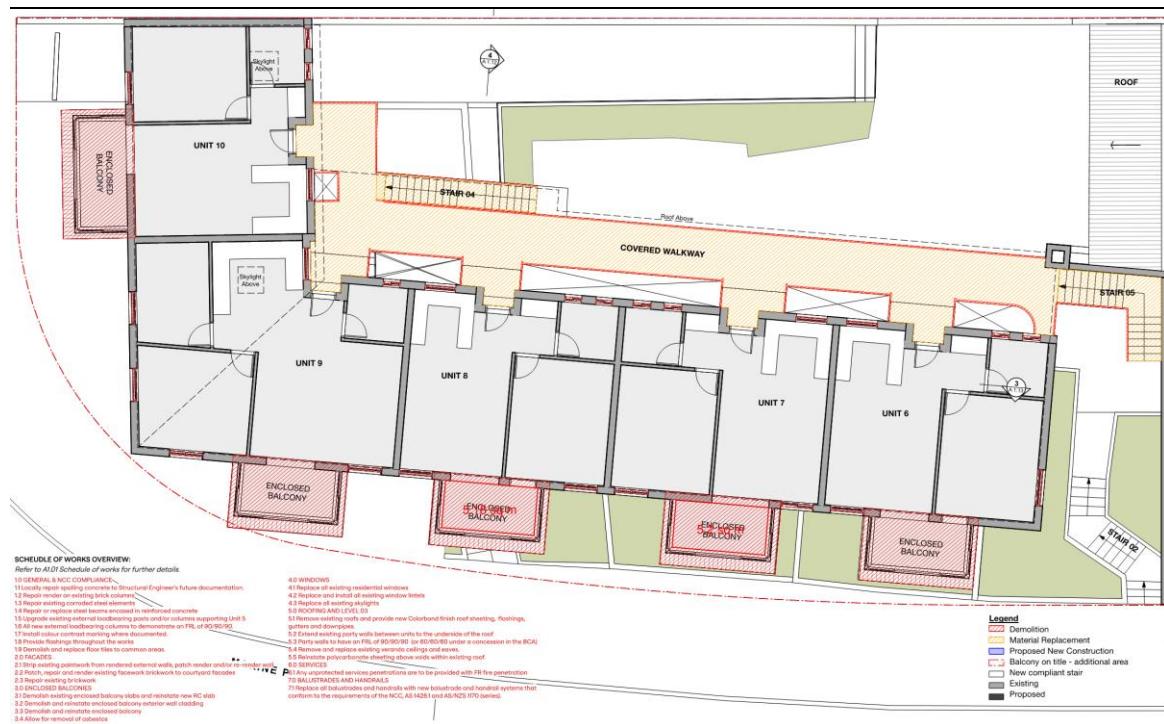


Figure 12: Level 03 Plan – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

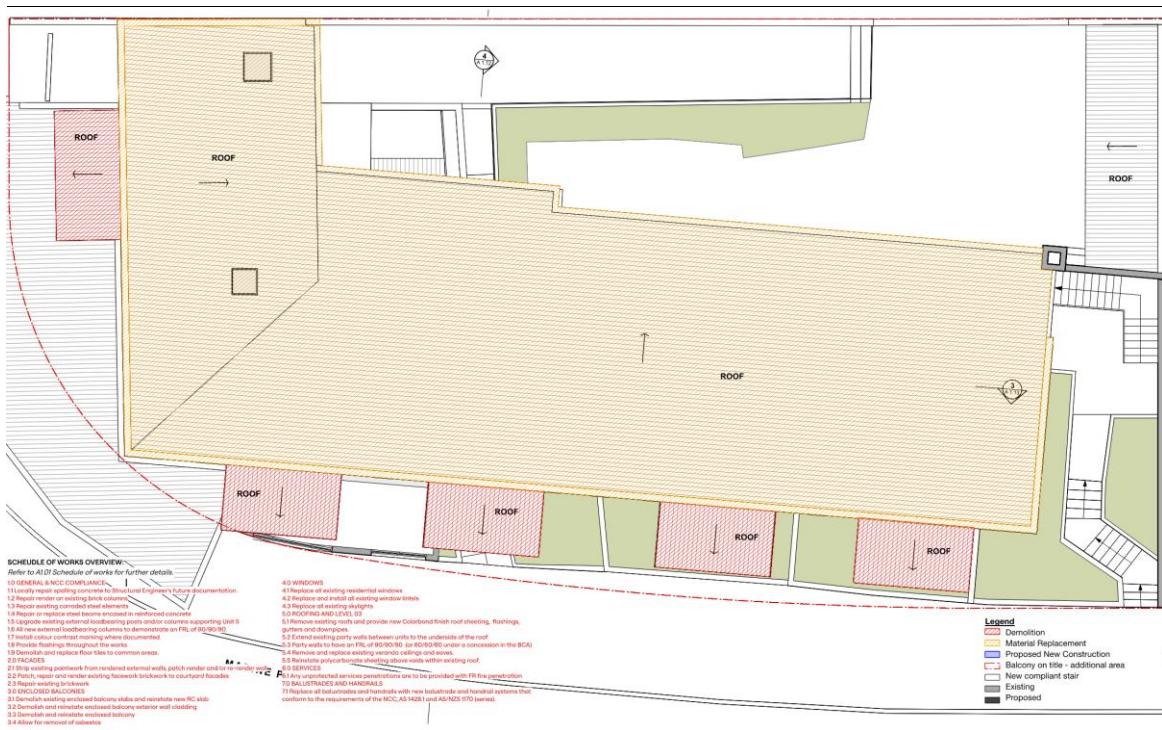


Figure 13: Roof Plan – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

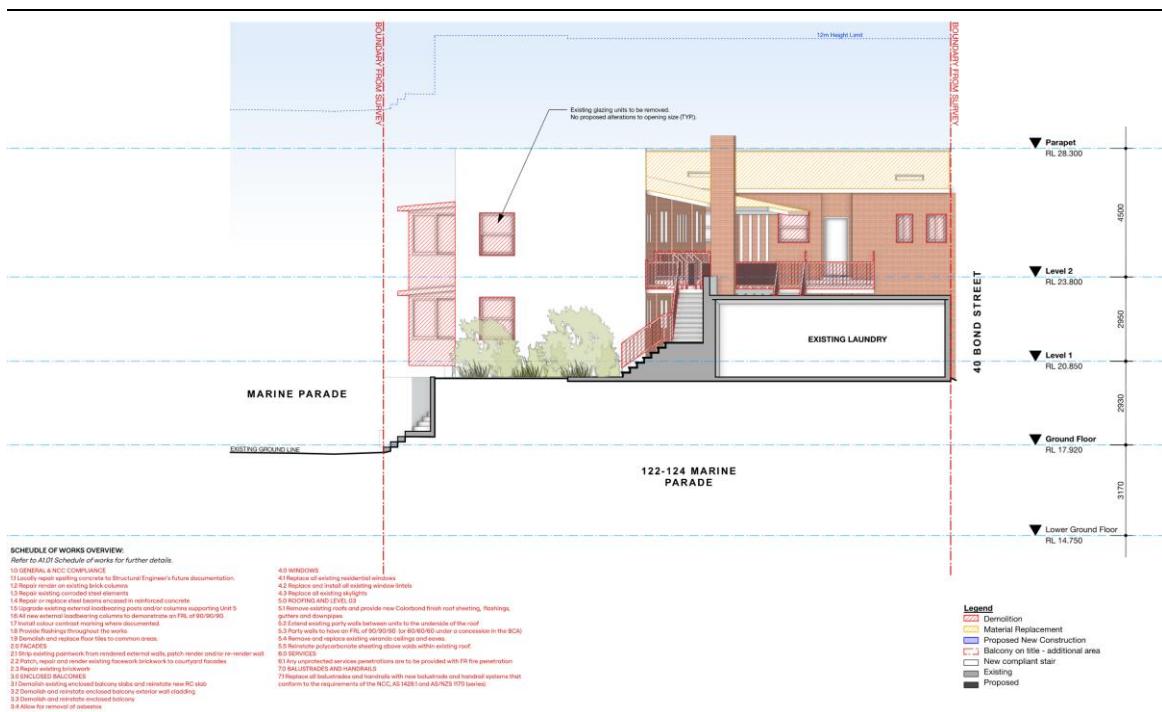


Figure 14: North Elevation – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

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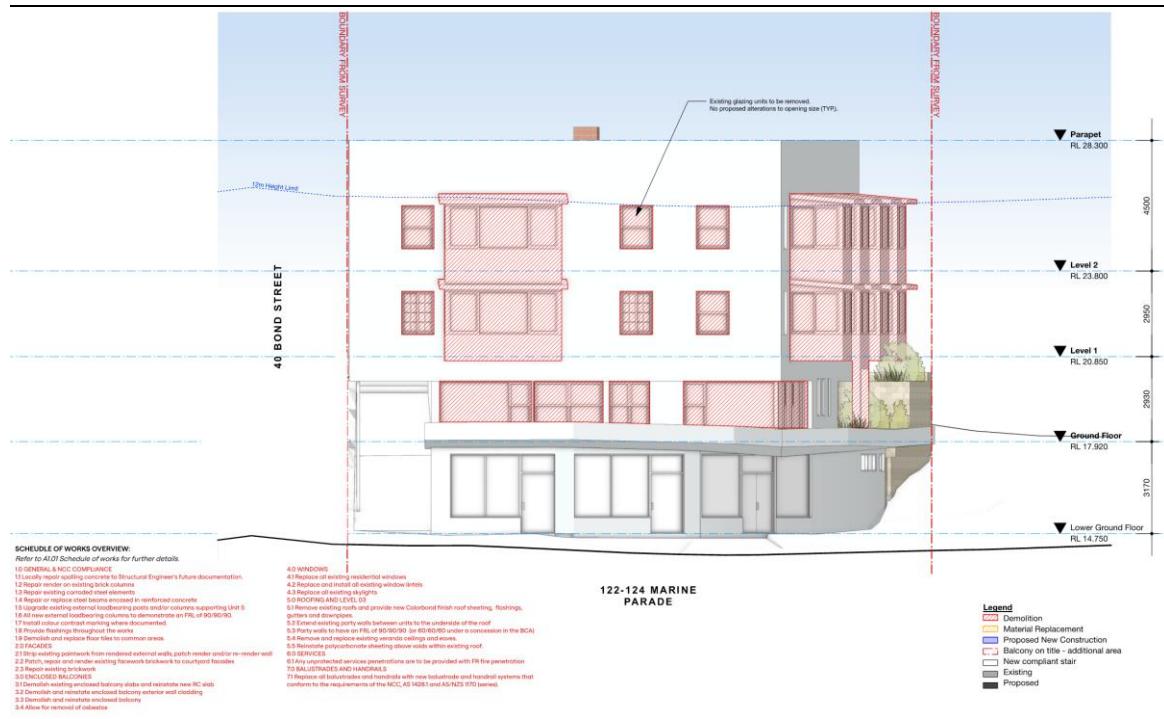


Figure 15: South Elevation – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

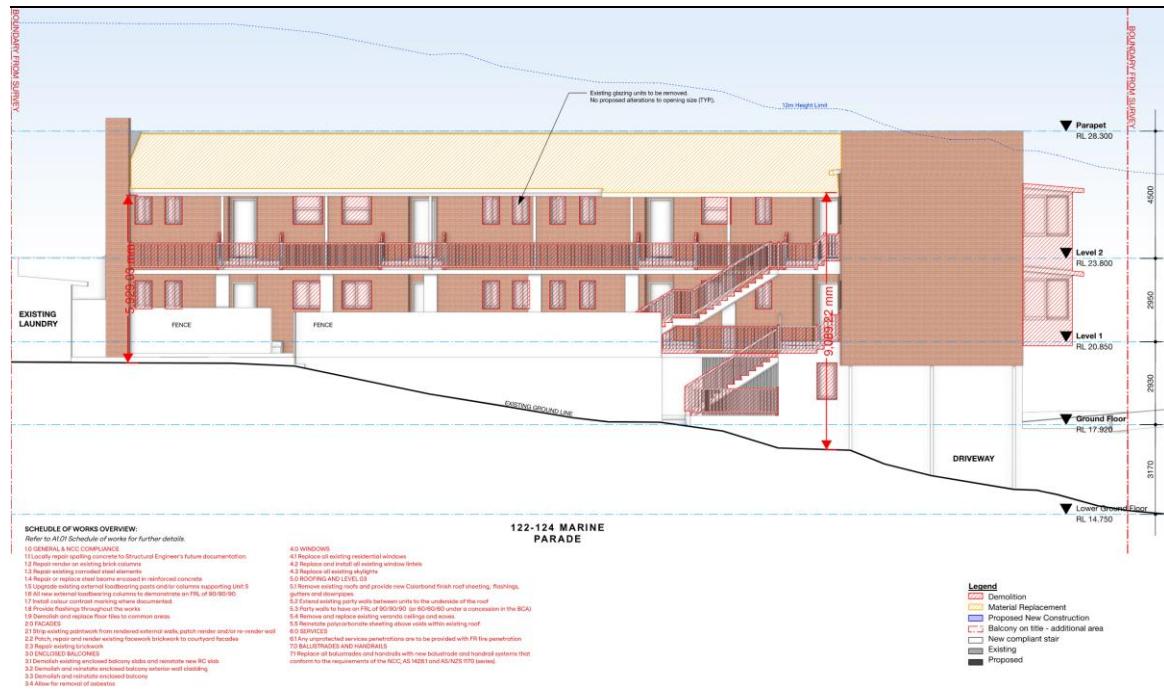


Figure 16: West Elevation – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

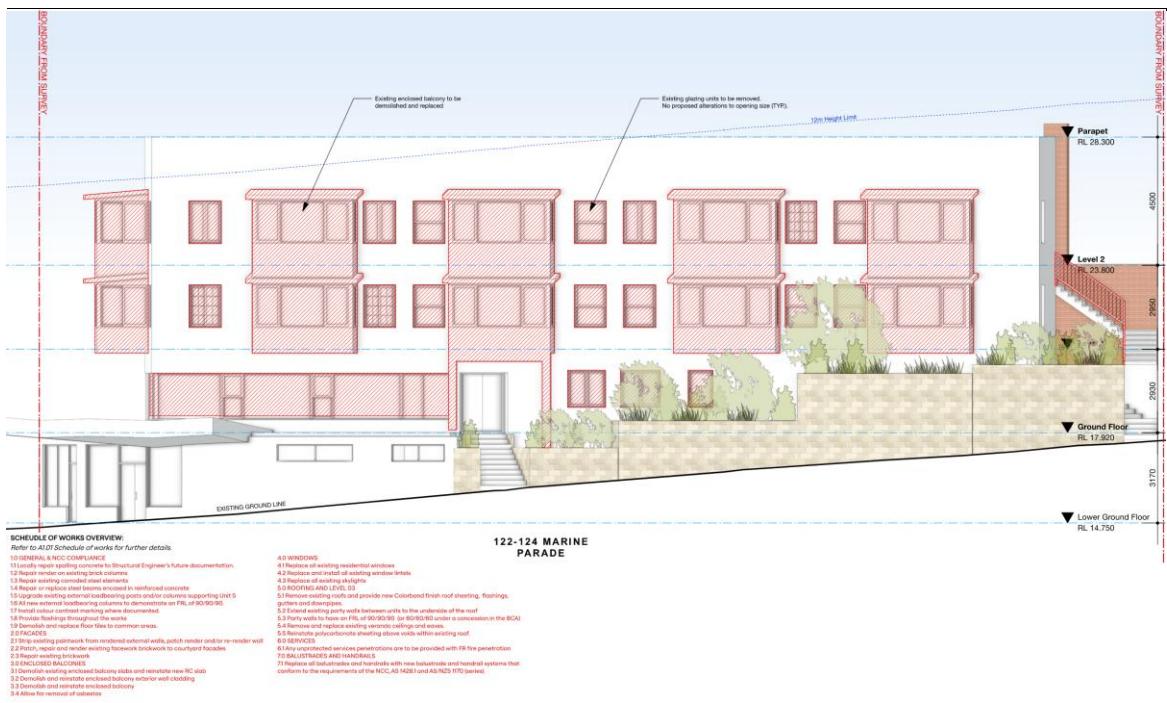


Figure 17: East Elevation – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

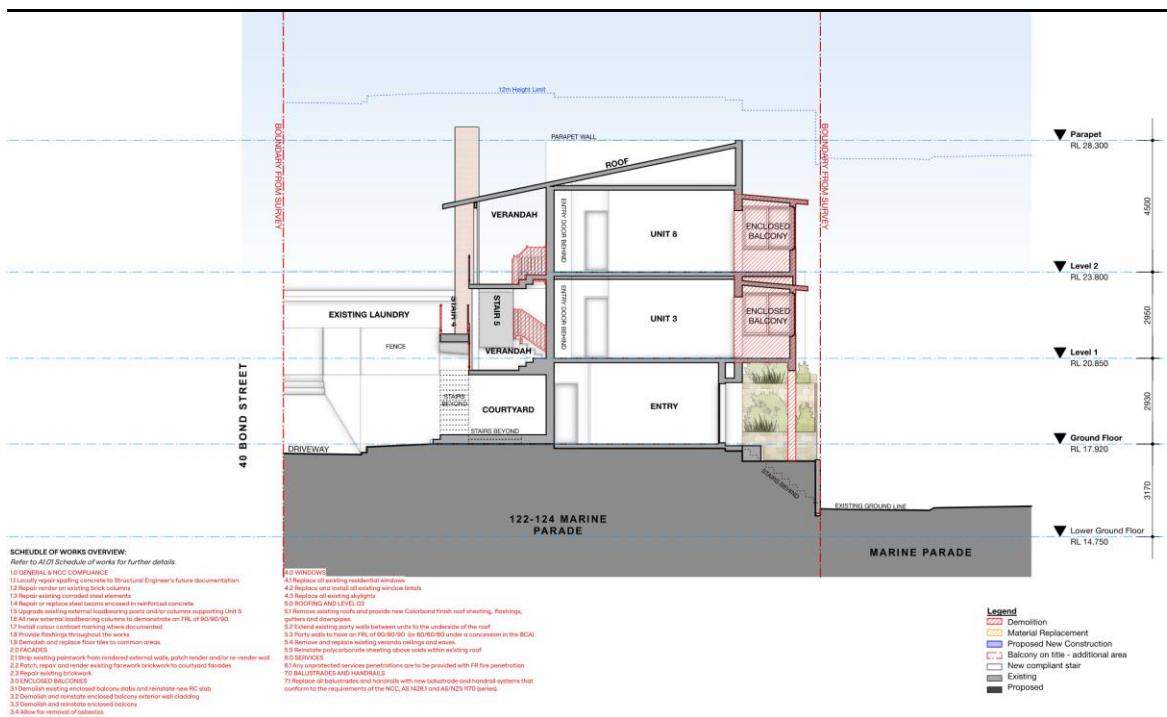


Figure 18: Cross Section 01 – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

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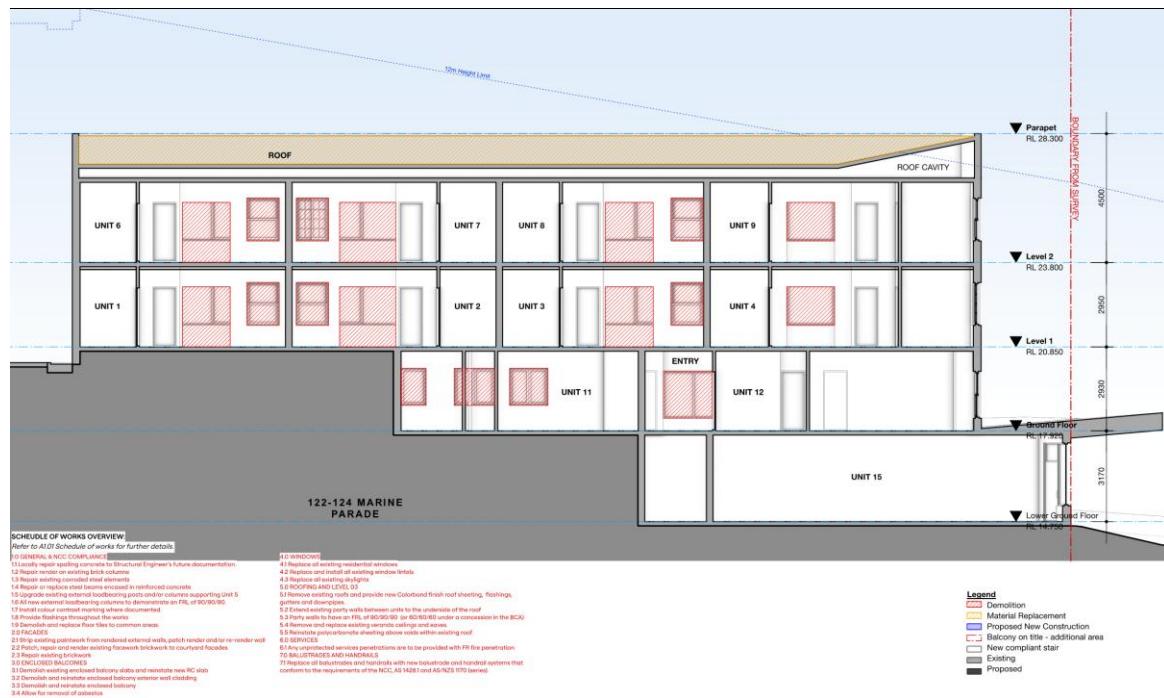


Figure 19: Long Section – Existing and Demolition (Source: Hill Thalis – 05/12/2025)

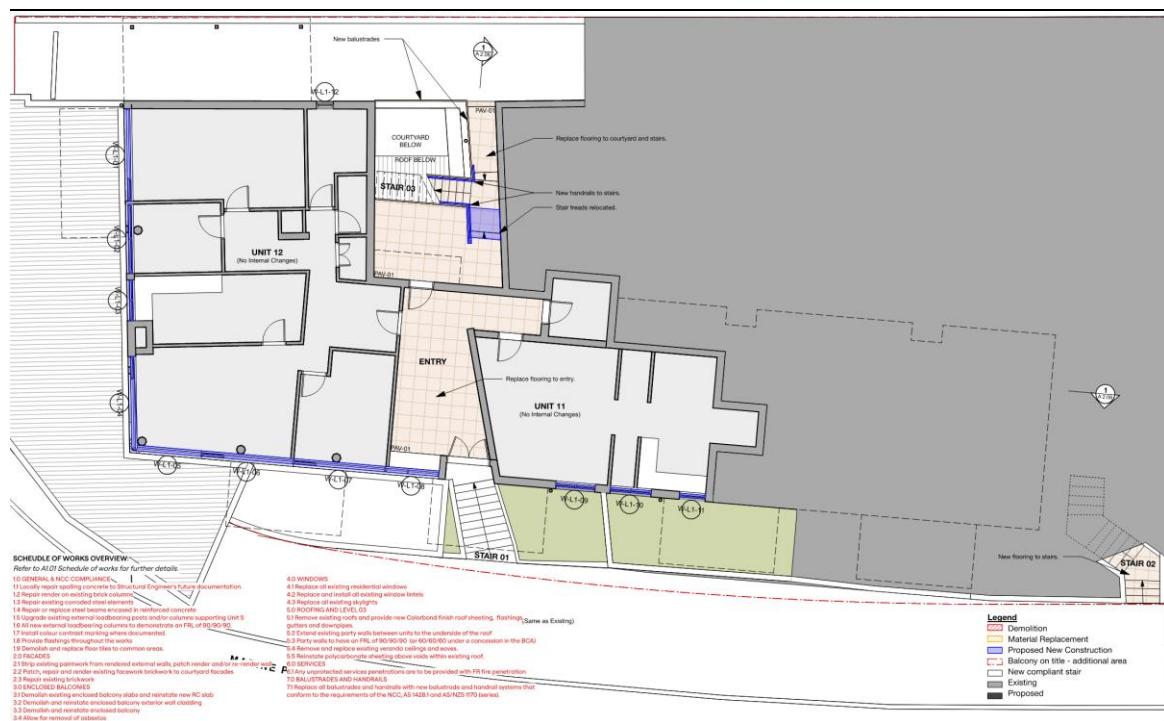


Figure 20: Proposed Level 01 Plan (Source: Hill Thalis – 05/12/2025)

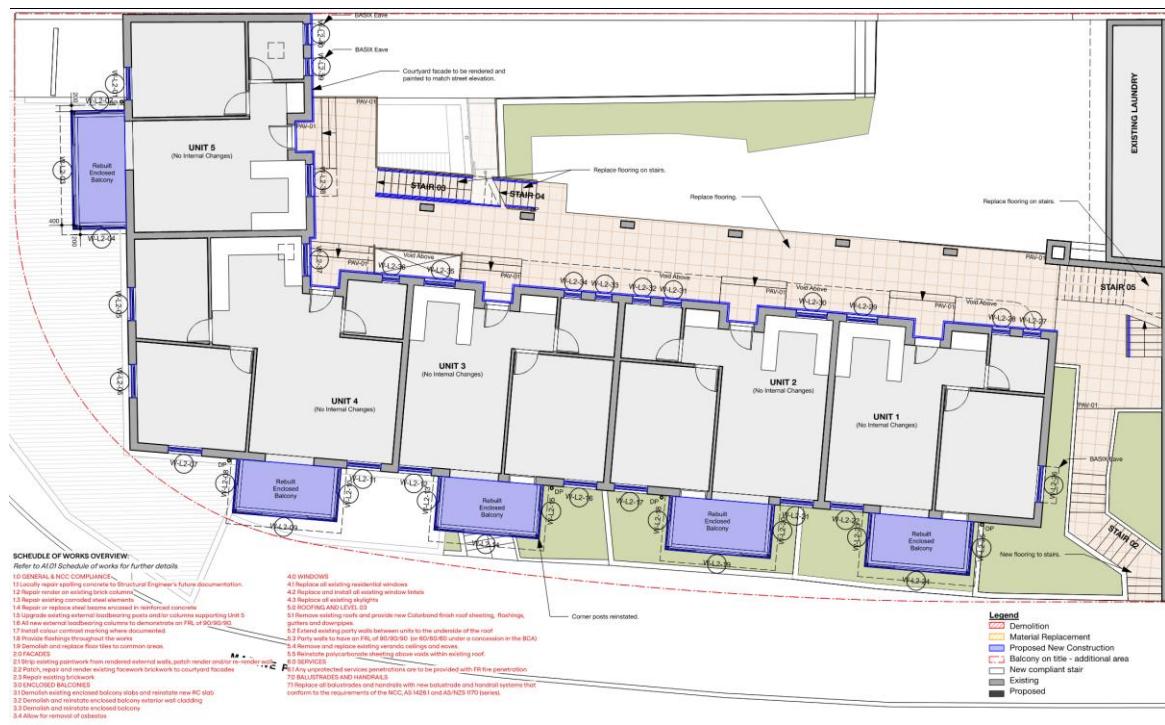


Figure 21: Proposed Level 02 Plan (Source: Hill Thalis – 05/12/2025)

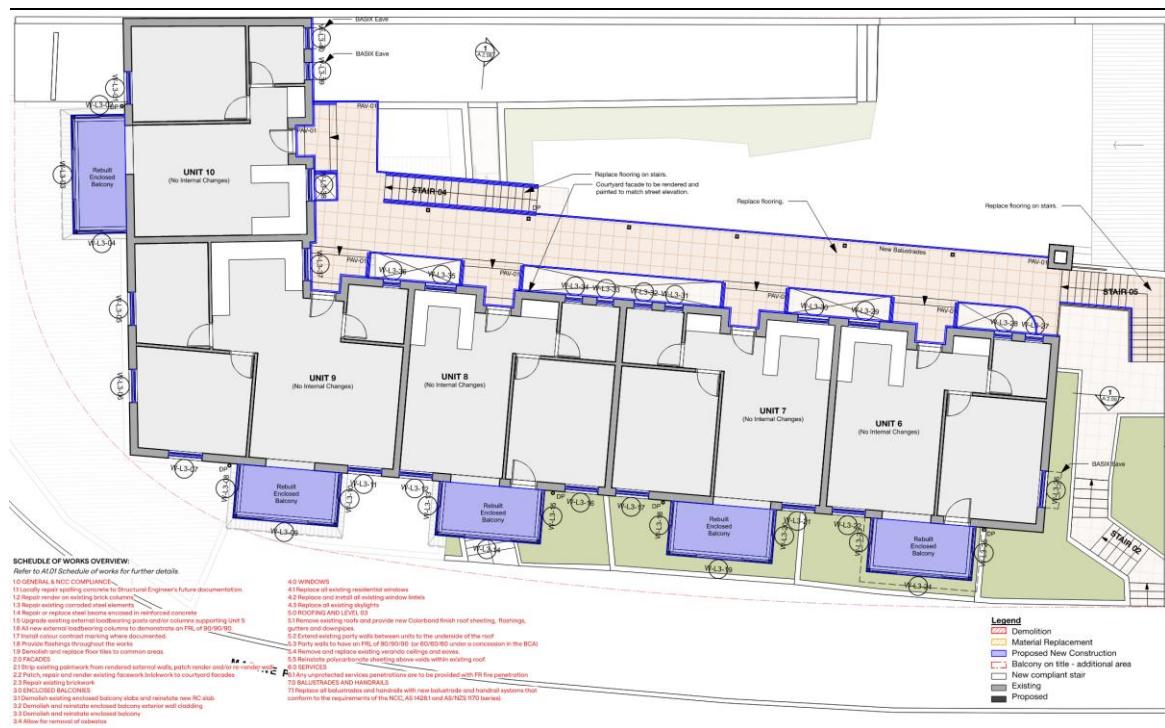


Figure 22: Proposed Level 03 Plan (Source: Hill Thalis – 05/12/2025)

D4/26

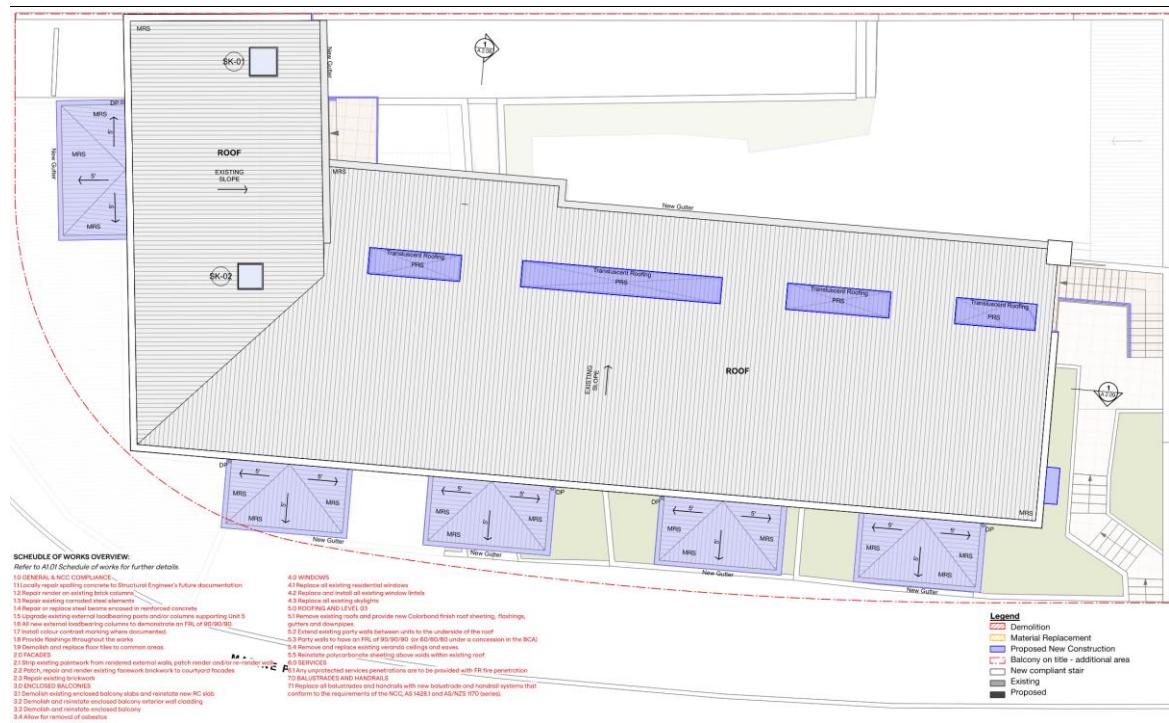


Figure 23: Proposed Roof Plan (Source: *Hill Thalis* – 05/12/2025)

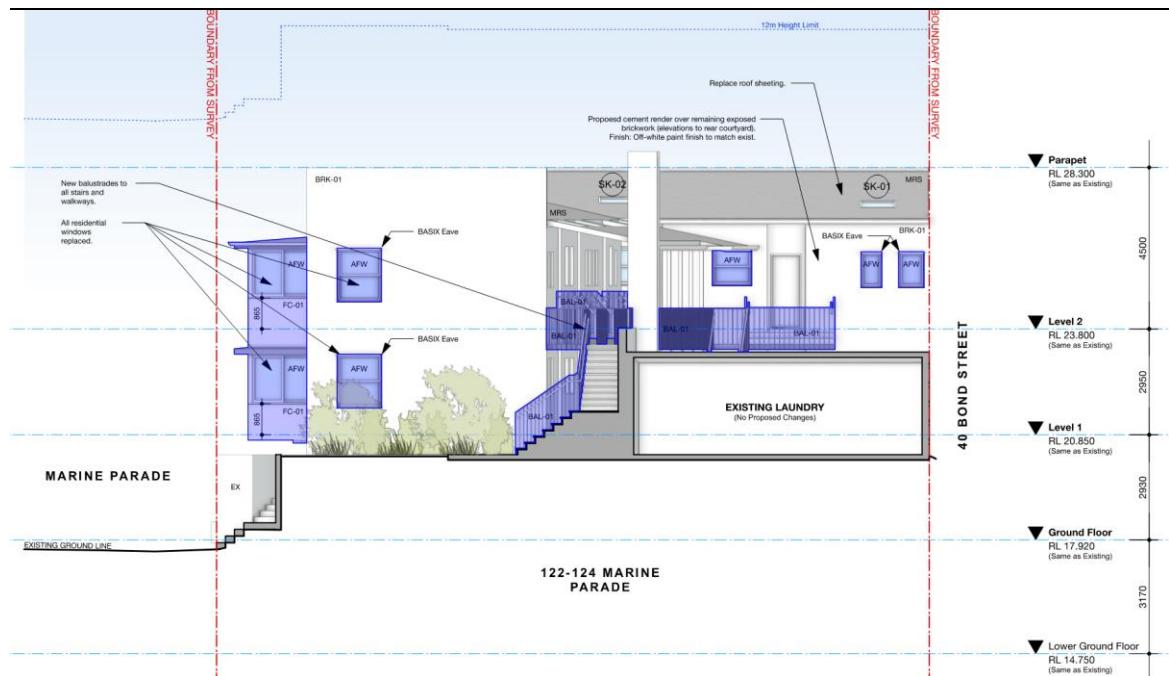


Figure 24: Proposed North Elevation (Source: *Hill Thalis* – 05/12/2025)

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Figure 25: Proposed South Elevation (Source: Hill Thalis – 05/12/2025)

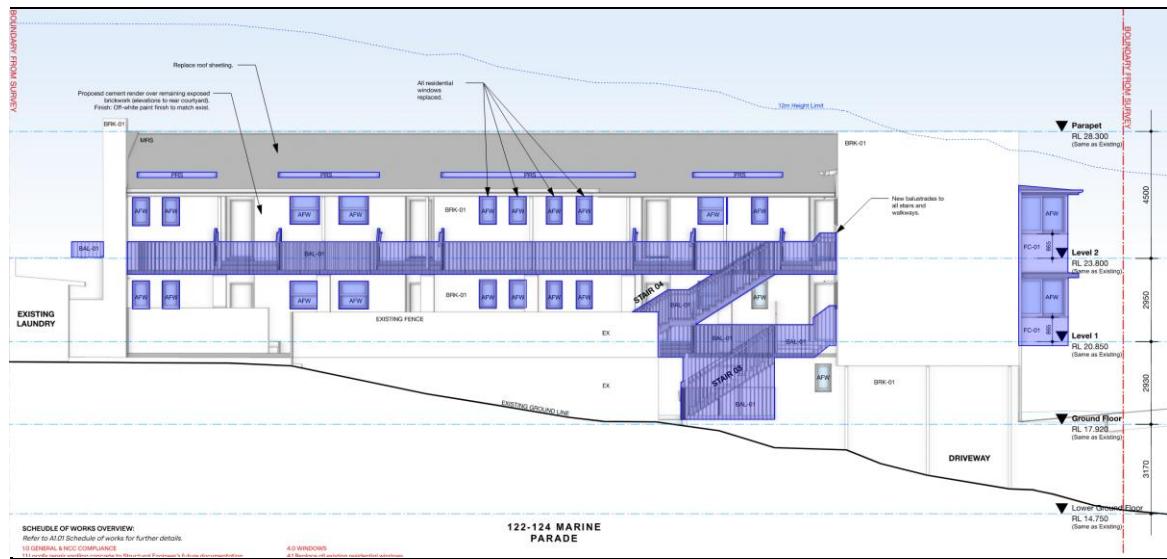


Figure 26: Proposed West Elevation (Source: Hill Thalis – 05/12/2025)

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Figure 27: Proposed East Elevation (Source: Hill Thalis – 05/12/2025)

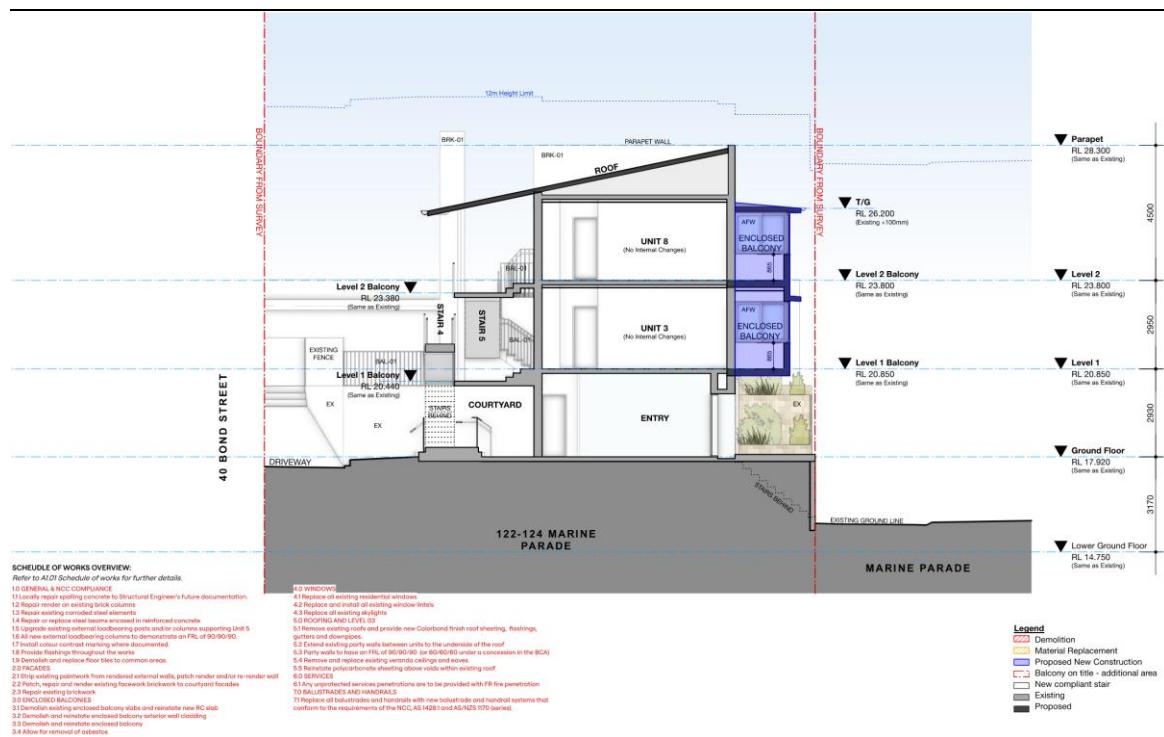


Figure 28: Proposed Cross Elevation (Source: Hill Thalis – 05/12/2025)



Figure 29: Proposed Cross Elevation (Source: Hill Thalis – 05/12/2025)

TAG	SAMPLE	COLOUR	DESCRIPTION	TAG	SAMPLE	COLOUR	DESCRIPTION
AFW		Off- white, Powder coated	Aluminum Framed Window. Finish in accordance with Schedule of Work.	DP		Surfmist or sim.	Downpipe. Finish in accordance with Schedule of Work.
BAL-01		Off-white	Metal Balustrade. Finish in accordance with Schedule of Work.	GL		Off- white, Powder coated	Fixed Glazing
BRK-01		Off-white	Brick, rendered, paint finish. Finish in accordance with Schedule of Work.	GU		Surfmist or sim.	Gutter. Finish in accordance with Schedule of Work.
CO		Natural Grey	Concrete Finish. Finish in accordance with Schedule of Work.	MRS		Surfmist or sim.	Metal Roof Sheet. Finish in accordance with Schedule of Work.
FC-01		Off-white	Fiber Cement Cladding. Finish in accordance with Schedule of Work.	PRS		Clear	Polycarbonate Roof Sheet

Figure 30: Proposed Material Schedule (Source: Hill Thalis – 05/12/2025)

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

Multiple BASIX certificates have been submitted in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and the Sustainable Buildings SEPP, individually for each unit. The submitted BASIX Certificates include a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

6.2. SEPP (Biodiversity and Conservation) 2021

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

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

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

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

The proposal is unlikely to cause an adverse impact on access to and along the foreshore and is unlikely to result in an adverse impact to the visual amenity and scenic qualities of the coast.

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

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

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

Chapter 4 – Remediation of Land

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

The subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement.

The nature and location of the proposed development (demolition and replacement of commercial street awning) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed. In this regard it is Council's position that the site remains suitable for the proposed development, posing no risk of contamination.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned Residential R3 Medium Density under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.9:1	1.22:1 (as existing)	No
Cl 4.3: Building height (max)	12m	13.75m (as existing)	No

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.7 - Foreshore scenic protection area

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

The proposed development is generally consistent with the scale of surrounding development, which comprises of dwelling houses and residential flat buildings.

The proposal will not compromise the scenic qualities of the foreshore location and has been designed to protect existing views from neighbouring properties. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP 2012.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.9:1	1.22:1	234m ²	35.56%
Cl 4.3: Building height (max)	12m	13.75m	1.75m	14.58%

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:*

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

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.

- 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.

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

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

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

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

- 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
- The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term

'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

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

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

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

The applicant's written justification for the departure from the Height of Buildings standard is contained in Appendix 1.

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

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

The objectives of the Height of Buildings standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the variation does not alter the envelope of the building, maintaining the streetscape presentation and existing maximum height, compatible with the development in the vicinity.

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied as there are no changes to the built form or site coverage, the proposed height variation does not generate additional shadowing impacts, and the nature of works for a material change do not generate a loss of views where the height variation is limited only to the roof, not generating privacy impacts.

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

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

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

- The building height departure is limited to the existing roof form to the south. The remainder of the development complies with the building height standard
- There are very minor to no environmental impacts due to the proposed works limited to material changes
- The height variation is as existing and indiscernible from public and private vantage points
- The effect of the sloping topography and front and side setbacks on and adjacent to the subject site minimises the perception of the built form on the site
- The proposed works provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land.

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the Height of Buildings development standard.

7.2. Exception to the Floor Space Ratio (FSR) development standard (Cl 4.4)

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed works maintain the existing envelope and the presentation remains compatible with the character of the locality, where notably at 132 Marine parade and 38 Bond Street are recently approved 3 part 4 and 4-storey residential flat buildings.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed construction results in the great improvement in appearance and condition of the existing building, minimizing the perceived bulk and scale of the FSR non-compliance.

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

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

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

Similarly to the impacts from the variation with the height of buildings standard, the proposed works do not entail shadowing impacts due to there being no change from the existing building envelope and therefore will not impose any view impacts. The departure from the FSR standard is limited to what is existing, and the proposed works mainly entail alterations to remediate the original structure where there are no additional balconies and windows proposed, maintaining the existing privacy achieved.

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

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

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

- The FSR variation maintains the provision of the housing needs of the community within a medium density residential environment.
- The application does not propose change to the unit mix, continuing to promote housing choice, flexibility and affordability.
- The proposal will not inhibit other land uses that provide facilities or services to meet the daily needs of residents.
- The proposed development will not unreasonably impact on the amenity of the vicinity, specifically in terms of overshadowing, privacy and view loss

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received as a result of notification
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

10. Conclusion

That the application for remediation works to the existing residential flat building and reconstruction of the enclosed balconies be approved (subject to conditions) for the following reasons:

- It has been successfully demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify that contravention;
- Subject to the recommended conditions, the proposal is generally consistent with the relevant objectives contained within the LEP and the relevant requirements of the RDCP 2013 and 2023;

- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

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

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

D4/26

This Clause 4.6 variation request has been prepared to accompany the Development Application for remediation works to the existing residential flat building and reconstruction of the enclosed balconies at 122-124 Marine Parade, Maroubra.

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

Clause 4.6 Exceptions to development standards

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

Note—

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

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

(c) clause 5.4,
 (caa) clause 5.5,
 (ca) clause 6.16(3)(b)

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

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

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

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the Randwick LEP 2012. The maximum permissible height of a building is 12m as shown on the RLEP2012 map below.

The maximum variation is associated with the existing roof, which has a maximum height of 13.75m (1.75m variation or 14.58%).

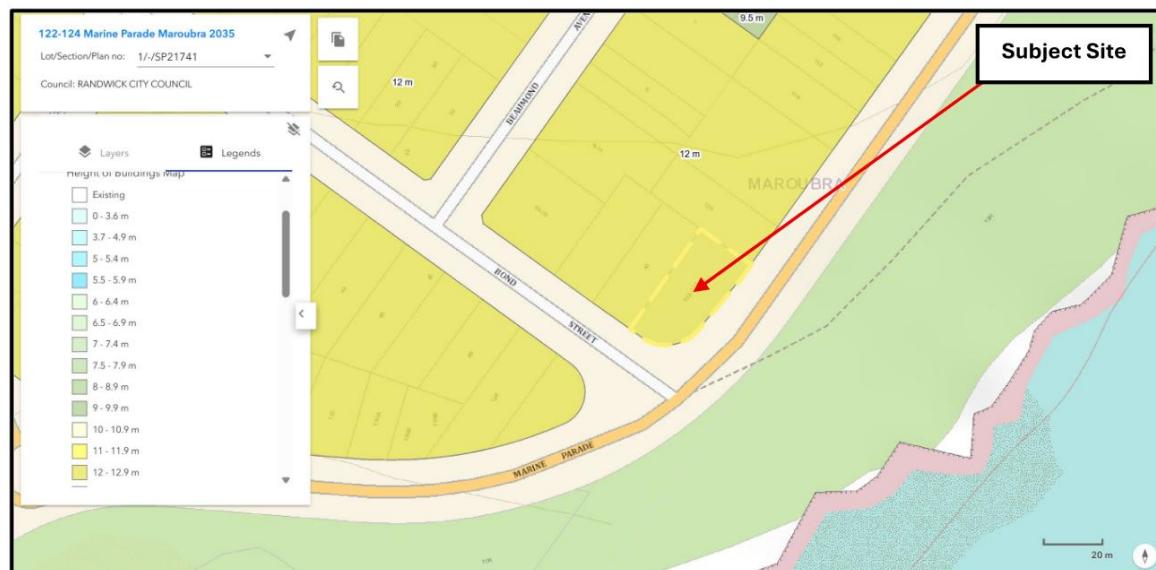


Figure 1: Building Height Map



Figure 2: Excerpt of long section, noting that the existing built form breaches the 12m height limit

Justification for Contravention of the Development Standard

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

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

5-Part test

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

The 5-Part Test is summarised as follows:

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

- 1. objectives of the development standard are achieved notwithstanding the non-compliance**
- 2. underlying objective or purpose is not relevant to the development**
- 3. underlying objective or purpose would be defeated or thwarted if compliance was required**
- 4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard**
- 5. zoning of the land on which the development is proposed was unreasonable or inappropriate.**

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

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

Consistency with the Objectives of the Building Height Development Standard in the LEP	
Objectives	Assessment
(a) to ensure the height of buildings is compatible with the character of the locality,	<p>The site is within a Residential R3 Medium Density Residential zone, which promotes medium density residential housing. The residential controls in the zone include a 12m height (generally 3-4 storeys) and FSR of 0.9:1.</p> <p>The existing height of 13.75 metres will not change, and will remain compatible with the character of the locality.</p> <p>The proposed variation includes material changes to the existing roof.</p> <p>It is reiterated that the changes associated with the height variation is minor in bulk and scale, ensuring that the components over the height limit will not be prominent when viewed from Marine Parade.</p> <p>The built form will be compatible with the nearby approved residential flat building at 116-118 Marine Parade, with an excerpt of the street elevation below:</p>  <p>Figure 3: Approved 4-storey residential flat building to the north-east at 116-118 Marine Pde</p> <p>The proposed reconstruction will remain compatible with the recent approval under <i>Emcon Group Pty Ltd v Randwick City Council (No 2) [2021] NSWLEC 1549</i> to the southwest at 132 Marine Parade. The approved redevelopment will be a part 3 part 4 residential flat building, consistent in bulk and scale with the locality of Marine Parade.</p>

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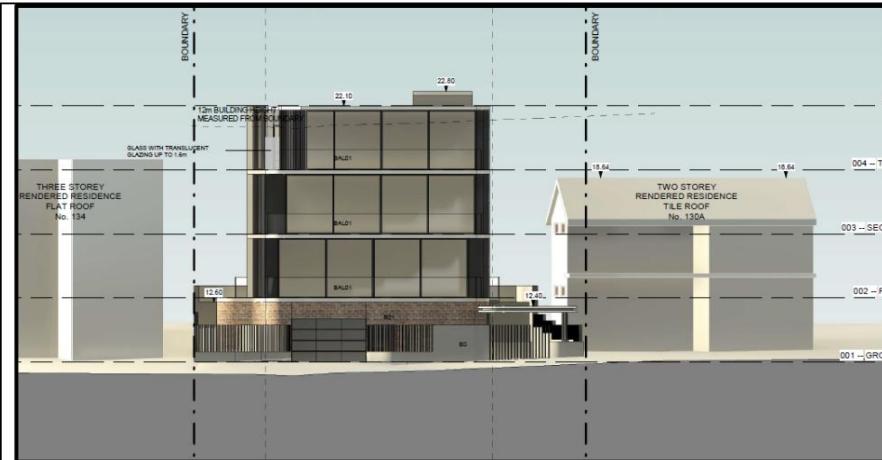


Figure 4: Excerpt of DA/465/2020 approved south elevation facing Marine Parade



Figure 5: Excerpt of proposed south elevation facing Marine Parade

There is no change to the existing building envelope, therefore presenting as a part 3 part 4 storey residential flat building, consistent with the desired future character of the locality.

The scale and presentation will also be compatible with the recently completed 4-storey residential flat building 2 properties to the west at 38 Bond Street, as shown below:



Figure 6: Recently completed 4-storey residential flat building at 38 Bond Street

The proposed built form is also compatible with the 5-storey residential flat building to the south across Bond Street at 126 Marine Parade



Figure 7: 4-storey residential flat building to the south at 126 Marine Pde

On this basis, the proposed height variation will not generate any inconsistency with this objective.

(b) to ensure that development is compatible with the scale and character

The subject site is not heritage listed, is not in a conservation area and does not adjoin any heritage items. On this basis, no assessment under Clause 5.10 of the RLEP2012 is required.

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<p>of contributory buildings in a conservation area or near a heritage item</p>	
<p>(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p>	<p>The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this height would not create additional benefit for adjoining properties or the locality.</p> <p><u>Overshadowing:</u> There are no changes to the built form or site cover, ensuring that there will be no shadow impact due to the substantial separation distances to the built forms on either side.</p> <p><u>View Loss:</u> The proposed height variation will not be responsible for any view loss from any adjoining or nearby property.</p> <p><u>Privacy:</u> The building height departure is limited to the upper portion of the roof form and not any balconies or window openings, which thereby confirms that the height variation does not generate privacy impacts.</p>
<p>Consistency with the Objectives of the R3 Medium Density Residential Zone</p>	
<p>Objectives</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment • To provide a variety of housing types within a medium density residential environment • To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>Assessment</p> <p>The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.</p> <p>The proposed height variation does not raise any inconsistency with the ability of the proposal to achieve the objectives of the R3 Medium Density Residential zone.</p> <p>The proposal is consistent with the objectives of the R3 zone as follows:</p> <ul style="list-style-type: none"> • Despite the height variation, the proposed development will provide for the housing needs of the community within a medium density residential environment. • The proposal makes no changes to the unit mix, which will continue in promoting housing choice, flexibility and affordability. • The proposal will not inhibit other land uses that provide facilities or services to meet the day-to-day needs of residents. • The proposed development will not unreasonably impact on the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss. <p>Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the height variation.</p>

<ul style="list-style-type: none">• <i>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.</i>• <i>To protect the amenity of residents.</i>• <i>To encourage housing affordability.</i>• <i>To enable small-scale business uses in existing commercial buildings.</i>	
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Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality and meets the objectives of the development standard.

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

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

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

- The building height departure is limited to the existing roof form to the south. The remainder of the development complies with the building height standard. Refer to the extract of the Section above.
- Absence of environmental impacts is a recognised environmental planning ground. In this regard, the proposed height variation has no adverse shadow, privacy or view impacts.
- The height variation is as existing and indiscernible from public and private vantage points. The lack of visibility of the elements over the height limit is considered to constitute an environmental planning ground.
- The effect of the sloping topography and front and side setbacks on and adjacent to the subject site minimises the perception of the built form on the site. Such a circumstance is considered to constitute an environmental planning ground.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

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

Conclusion

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

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

- economic welfare of the community and a better environment (Section 1.3(a))
- orderly and economic use and development of land (Section 1.3(c))
- protect the environment (Section 1.3(e))
- sustainable management of built heritage (Section 1.3(f))

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

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

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at 122-124 Marine Parade, Maroubra and is requested to be looked upon favourably by the consent authority.

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

CLAUSE 4.6 VARIATION REQUEST TO FSR DEVELOPMENT STANDARD PURSUANT TO
CLAUSE 4.4 OF RANDWICK LEP 2012

D4/26

This Clause 4.6 variation request has been prepared to accompany the Development Application for remediation works to the existing residential flat building and reconstruction of the enclosed balconies at 122-124 Marine Parade, Maroubra.

The proposal results in a non-compliance with Clause 4.4 of the Randwick LEP 2012, which relates to the FSR standard. As such, this Clause 4.6 variation request has been prepared in accordance with Clause 4.6 of the Randwick LEP 2012:

Clause 4.6 Exceptions to development standards

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

Note—

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

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

(c) clause 5.4,
 (caa) clause 5.5,
 (ca) clause 6.16(3)(b)

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

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

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

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the Randwick LEP 2012 - a maximum FSR of 0.9:1, demonstrated on the LEP map below.



Figure 1: FSR Map

Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal for an FSR of 1.22:1, which is a 31.7% (231.9sqm) variation from the numerical development standard.

The extent and siting of the component which breaches the FSR limit is shown below:

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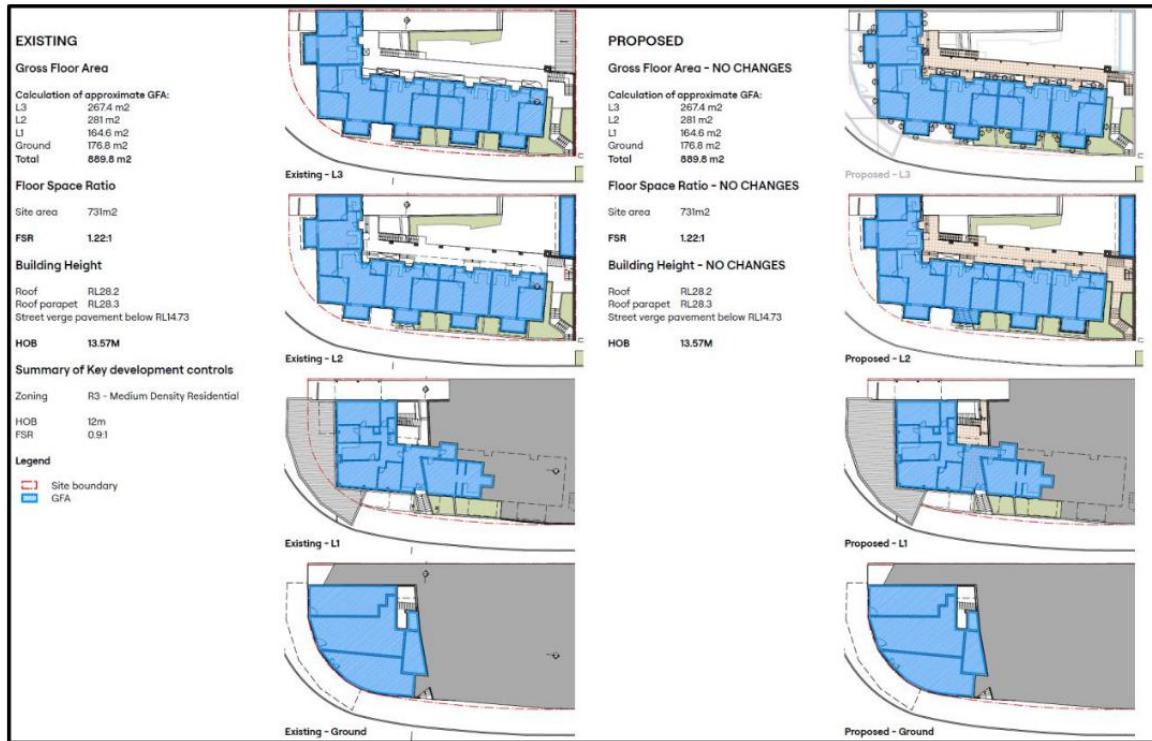


Figure 2: Excerpt of area calculations noting no proposed change to the existing

Justification for Contravention of the Development Standard

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

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

5-Part test

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

The 5-Part Test is summarised as follows:

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

- objectives of the development standard are achieved notwithstanding the non-compliance**
- underlying objective or purpose is not relevant to the development**
- underlying objective or purpose would be defeated or thwarted if compliance was required**

4. development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard
5. zoning of the land on which the development is proposed was unreasonable or inappropriate.

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

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

Consistency with the Objectives of the FSR Development Standard in the LEP	
Objectives	Assessment
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>The site is within a Residential R3 Medium Density Residential zone, which promotes medium density residential housing. The residential controls in the zone include a FSR of 0.9:1 and a height and scale of 3-4 storeys.</p> <p>There is no change to the existing building envelope and will remain compatible with the character of the locality.</p> <p>The built form will be compatible with the nearby approved residential flat building at 116-118 Marine Parade, with an excerpt of the street elevation below:</p>  <p>Figure 3: Approved 4-storey residential flat building to the north-east at 116-118 Marine Pde</p> <p>The proposed reconstruction will remain compatible with the recent approval under <i>Emcon Group Pty Ltd v Randwick City Council (No 2) [2021] NSWLEC 1549</i> to the southwest at 132 Marine Parade. The approved redevelopment will be a part 3 part 4 residential flat building, consistent in bulk and scale with the locality of Marine Parade.</p>

D4/26

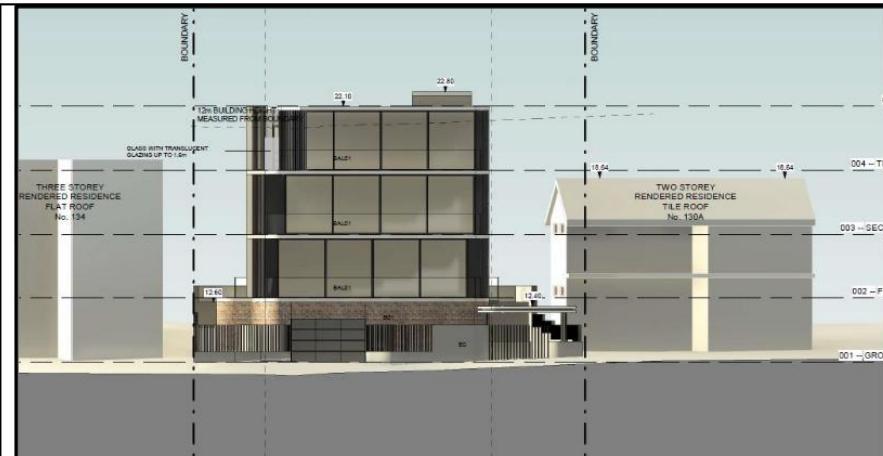


Figure 4: Excerpt of DA/465/2020 approved south elevation facing Marine Parade



Figure 5: Excerpt of proposed south elevation facing Marine Parade

There is no change to the existing building envelope, therefore presenting as a part 3 part 4 storey residential flat building, consistent with the desired future character of the locality.

The scale and presentation will also be compatible with the recently completed 4-storey residential flat building 2 properties to the west at 38 Bond Street, as shown below:



Figure 6: Recently completed 4-storey residential flat building at 38 Bond Street

The proposed built form is also compatible with the 5-storey residential flat building to the south across Bond Street at 126 Marine Parade



Figure 7: 4-storey residential flat building to the south at 126 Marine Pde

On this basis, the proposed FSR variation will not generate any inconsistency with this objective.

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

The proposed reconstruction will significantly improve the appearance and condition of the existing building, minimising the perceived bulk and scale of the FSR non-compliance.

<i>environmental and energy needs,</i>	There are no changes to the solar access provided to each unit and no changes to the cross-ventilation of each unit.
<i>(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</i>	The subject site is not heritage listed, is not in a conservation area and does not adjoin any heritage items. On this basis, no assessment under Clause 5.10 of the RLEP2012 is required.
<i>(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</i>	<p>The proposed exceedance of the FSR control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in FSR would not create additional benefit for adjoining properties or the locality.</p> <p><u>Overshadowing:</u> There are no changes to the built form or existing building envelope, ensuring that there will be no overshadowing impacts.</p> <p><u>View Loss:</u> The proposed FSR variation will not be responsible for any view loss from any adjoining or nearby property due to no changes being proposed to the building envelope.</p> <p><u>Privacy:</u> The FSR departure is limited to the existing FSR exceedance. Reconstruction within the building envelope therefore makes no changes to any visual or acoustic privacy impacts. No additional windows or balconies are proposed.</p>
Consistency with the Objectives of the R3 Medium Density Residential Zone	
Objectives	Assessment
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a medium density residential environment .</i> • <i>To provide a variety of housing types within a medium density residential environment .</i> • <i>To enable other land uses that</i> 	<p>The site is zoned R3 Medium Density Residential under the provisions of Randwick LEP 2012.</p> <p>The proposed FSR variation does not raise any inconsistency with the ability of the proposal to achieve the objectives of the R3 Medium Density Residential zone.</p> <p>The proposal is consistent with the objectives of the R3 zone as follows:</p> <ul style="list-style-type: none"> • Despite the FSR variation, the proposed development will provide for the housing needs of the community within a medium density residential environment. • The proposal makes no changes to the unit mix, which will continue in promoting housing choice, flexibility and affordability. • The proposal will not inhibit other land uses that provide facilities or services to meet the day-to-day needs of residents. • The proposed development will not unreasonably impact on the amenity of neighbouring and nearby properties in terms of overshadowing, privacy and view loss. <p>Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the FSR variation.</p>

<p>provide facilities or services to meet the day to day needs of residents.</p> <ul style="list-style-type: none">• 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.	
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Compliance with the development standard is unreasonable and unnecessary as the proposed FSR and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality and meets the objectives of the development standard.

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

As outlined in the 'Guide to Varying Development Standards' prepared by the Department of Planning and Environment in 2023, the term 'environmental planning grounds', while not defined

in the EP&A Act or the Standard Instrument, refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the EP&A Act. The scope of environmental planning grounds is wide as exemplified by the court cases (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [10]).

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

- The FSR departure is limited to the existing GFA exceedance. Refer to the extract of the area calculations above.
- Absence of environmental impacts is a recognised environmental planning ground. In this regard, the proposed FSR variation has no adverse shadow, privacy or view impacts.
- The FSR variation is existing and indiscernible from public and private vantage points, with no change to the existing building envelope. The lack of visibility of the elements over the FSR limit is considered to constitute an environmental planning ground.
- The effect of the sloping topography and front and side setbacks on and adjacent to the subject site minimises the perception of the built form on the site. Such a circumstance is considered to constitute an environmental planning ground.
- The proposed upgrades associated with the additional FSR is consistent with Council's Policy- *Design Ideas for Rejuvenating Residential Flat Buildings* which encourages improvements to outdated residential flat buildings. The Policy also contemplates that older buildings may be beyond the FSR standards.
- The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).

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

Conclusion

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

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

- economic welfare of the community and a better environment (Section 1.3(a))
- orderly and economic use and development of land (Section 1.3(c))
- protect the environment (Section 1.3(e))
- sustainable management of built heritage (Section 1.3(f))
- good design and amenity of the built environment (Section 1.3 (g))
- proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (Section 1.3(h))

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

For reasons mentioned herein, this Clause 4.6 variation request is forwarded in support of the development proposal at 122-124 Marine Parade, Maroubra and is requested to be looked upon favourably by the consent authority.

Appendix 3: DCP Compliance Table

3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)	
2. Site Planning				
3. Building Envelope				
3.4 Setbacks				
3.4.1 Front setback				
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>i) The reconstruction of the proposed balconies maintain the existing setback, consistent with the prevailing setback line along both street frontages</p> <p>ii) N/A</p> <p>iii) The proposed works do not include swimming pools, above-ground rainwater tanks and outbuildings at the front setback</p> <p>iv) N/A</p>	Acceptable.	
3.4.2 Side setback	Residential flat building	<p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 14m≤site frontage width<16m: 2.5m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the 	<p>i) The proposed works do not change the existing side setback of the building</p> <p>ii) N/A</p> <p>iii) There are no proposed changes to windows within 3m of the common boundaries</p>	Acceptable.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>development and adjoining residences.</p> <ul style="list-style-type: none"> - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>		
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.	There is no proposed change to the existing rear setback	N/A
4. Building Design			
4.1	Building façade		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>	<p>i) The proposed works address all street frontages</p> <p>ii) The proposed works do not change the orientation of the existing building</p> <p>iii) The proposed works enhance the articulation reflecting the function of the building, contributing positively to the visual character of the street</p> <p>iv) The proposed alterations for the balconies avoid the creation of unrelieved walls</p> <p>v) The application does not include works to building services and pipes</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>N/A</p>
4.2	Roof design		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if: <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and </p>	<p>i) The roof form, in terms of massing, pitch, profile and silhouette remain the same as only material replacement is proposed</p> <p>ii) The proposed works allow the roof form to respond to the orientation of the site as existing, responding to sun access</p> <p>iii) The proposed works maintain the existing roof pitch</p> <p>iv) The proposed works maintain the existing division of mass of the existing roof structure</p> <p>v) The proposed alterations provide further natural lighting to the internalised outdoor hallway, where the proposed skylights are sympathetic to the overall design of the building and streetscape</p> <p>vi) There are no proposed works to services and equipment</p> <p>vii) The proposal does not include a roof terrace, deck or outdoor space</p> <p>viii) The proposal does not include landscape planting on the roof</p>	<p>N/A</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street.</p> <ul style="list-style-type: none"> - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.4	External wall height and ceiling height		
	<p>ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.</p>	<p>The application proposes a variation to the height of buildings standard.</p> <p>The proposed works do not increase the existing wall height of the building that vary in different elevations due to a steep slope experienced through the site.</p> <p>Below are the wall heights at different elevations.</p> <p>North Elevation: 8m</p> <p>South Elevation - Bond Street Frontage: 14.16m</p> <p>West Elevation: 9m</p> <p>Marine Parade Frontage: 13.4m</p>	<p>Acceptable in this regard due to no proposed changes to existing.</p>
	<p>(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.</p>	<p>The proposed reconstruction of the enclosed balconies result in a ceiling height of 2.6m, which is an increase of</p>	<p>Acceptable with NCC standards and is an improvement from existing.</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		0.24m from the existing.	
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m2 and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	The proposed reconstruction of the balconies maintains the existing area of 5.2sqm	Acceptable, as existing.
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m2. All ground floor apartments are to have direct access to a terrace.	The application does not propose works to the terrace for ground floor apartments.	N/A
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. (iii) Use the following measures to complement façade articulation: <ul style="list-style-type: none">- Changes of colours and surface texture- Inclusion of light weight materials to contrast with solid masonry surfaces- The use of natural stones is encouraged. (iv) Avoid the following materials or treatment: <ul style="list-style-type: none">- Reflective wall cladding, panels and tiles and roof sheeting- High reflective or mirror glass- Large expanses of glass or curtain wall that is not protected by sun shade devices- Large expanses of rendered masonry- Light colours or finishes where they may cause adverse glare or reflectivity impacts	i) Submitted as DWG A 3.00 ii) The selection of colour and material palette complement the character and style of the building iii) The following measures are used to complement façade articulation iv) No proposed reflective surfaces, metal roof sheeting proposed to be painted, no large expanses of glass or curtain wall not protected by sun shade devices, large expanse of rendered masonry or light colours that may cause adverse glare v) Proposed materials and details are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration	Yes Yes Yes Yes Yes Yes N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(v) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vi) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.	No proposed works with sandstone	
5. Amenity			
5.1	Solar access and overshadowing		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	The nature of the works (altering the roof form of the balconies and material replacement) do not cause additional shadowing from the existing, allowing the units of the building to achieve the same solar access as existing.	N/A
	(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.		
	(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.		
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		
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. (ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June. (iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.	The proposed works do not change the building envelope, not impacting the existing solar access experienced for the surrounding development.	N/A
5.3	Visual privacy		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	<p>i) No proposed change to location of balcony</p> <p>ii) Balconies oriented to street frontages as existing.</p> <p>iii) N/A</p> <p>iv) The proposal does not alter existing or propose works for private open spaces</p> <p>No proposed privacy screens as the proposed works do not change the existing visual amenity experienced on site</p>	<p>N/A</p> <p>Yes</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
5.5	View sharing		
	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p>	<p>The location and design of the proposed works maintain the existing view corridors and vistas to Maroubra Beach and horizon views to the ocean.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		

Responsible officer: Raven Scales, Assessment Planner Cadet

File Reference: DA/1187/2025

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Draft Development Consent Conditions

Folder /DA No:	DA/1187/2025
Property:	122-124 Marine Parade, Maroubra NSW 2035
Proposal:	Remediation works to the existing residential flat building and reconstruction of the enclosed balconies, including internal works, window replacement and facade upgrades (Clause 4.6 variation to FSR and Building Height).
Recommendation:	Approval

GENERAL CONDITIONS**Condition****1. Approved plans and documentation**

Development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent (including any deferred commencement conditions):

Plan	Drawn by	Dated	Received by Council
A1.03 Ground Plan - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.04 Level 01 Plan - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.05 Level 02 Plan - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.06 Level 03 Plan - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.07 Roof Plan - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.08 North Elevation - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.09 South Elevation - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.10 West Elevation - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.11 East Elevation - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 1.12	Hill Thalis	05/12/2025	09/12/2025

Condition			
Cross Section 01 - Existing and Demolition			
A 1.13 Long Section - Existing and Demolition	Hill Thalis	05/12/2025	09/12/2025
A 2.00 Proposed Level 01 Plan	Hill Thalis	05/12/2025	09/12/2025
A 2.01 Proposed Level 02 Plan	Hill Thalis	05/12/2025	09/12/2025
A 2.02 Proposed Level 03 Plan	Hill Thalis	05/12/2025	09/12/2025
A 2.03 Proposed Roof Plan	Hill Thalis	05/12/2025	09/12/2025
A 2.04 Proposed North Elevation	Hill Thalis	05/12/2025	09/12/2025
A 2.05 Proposed South Elevation	Hill Thalis	05/12/2025	09/12/2025
A 2.06 Proposed West Elevation	Hill Thalis	05/12/2025	09/12/2025
A 2.07 Proposed East Elevation	Hill Thalis	05/12/2025	09/12/2025
A 2.08 Proposed Cross Section	Hill Thalis	05/12/2025	09/12/2025
A 2.09 Proposed Long Section	Hill Thalis	05/12/2025	09/12/2025
A 3.00 Material Schedule	Hill Thalis	05/12/2025	09/12/2025

BASIX Certificate No.	Dated	Received by Council
A1820499	05/11/2025	09/12/2025
A1820498	05/11/2025	09/12/2025
A1820509	05/11/2025	09/12/2025
A1820508	05/11/2025	09/12/2025
A1820507	05/11/2025	09/12/2025
A1820506	05/11/2025	09/12/2025
A1820505	05/11/2025	09/12/2025
A1820504	05/11/2025	09/12/2025
A1820502	05/11/2025	09/12/2025
A1820503	05/11/2025	09/12/2025
A1820501	05/11/2025	09/12/2025
A1820500	05/11/2025	09/12/2025

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

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

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

Condition
Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
3. External Colours, Materials & Finishes The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application. Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.
Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.
4. Section 7.12 Development Contributions Development Contributions are required in accordance with the applicable Randwick City Council Development Contributions Plan, based on the development cost of \$4,031,252.50 the following applicable monetary levy must be paid to Council: \$40,312.525. The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment. To calculate the indexed levy, the following formula must be used: IDC = ODC x CP2/CP1 Where: IDC = the indexed development cost ODC = the original development cost determined by the Council CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.
Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au .
Condition Reason: To ensure relevant contributions are paid.
5. Long Service Levy Payments Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the <i>Environmental Planning and Assessment Act 1979</i> . <i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i>
Condition Reason: To ensure the long service levy is paid.

Condition	
6.	Security Deposits The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i> : <ul style="list-style-type: none">• \$5000.00 - Damage / Civil Works Security Deposit Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure. The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works. To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works. Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.
7.	Sydney Water All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation. The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met. The Tap in™ service provides 24/7 access to a range of services, including: <ul style="list-style-type: none">• Building plan approvals• Connection and disconnection approvals• Diagrams• Trade waste approvals• Pressure information• Water meter installations• Pressure boosting and pump approvals• Change to an existing service or asset, e.g. relocating or moving an asset. Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service. Condition Reason: To ensure the development satisfies Sydney Water requirements.
8.	Building Code of Australia

Condition
In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i> , it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).
Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.
Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.
<p>9. BASIX Requirements</p> <p>In accordance with section 4.17(11) of the Environmental Planning and Assessment Act 1979 and section 75 of the Environmental Planning and Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.</p> <p>The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.</p> <p>The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.</p> <p>Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.</p>
<p>10. Site stability, Excavation and Construction work</p> <p>A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:</p> <ul style="list-style-type: none"> (a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties. (b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings. (c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration. (d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work. (e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.

Condition
Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.

BEFORE BUILDING WORK COMMENCES

Condition
<p>11. Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none">a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none">b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; andc) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); andd) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; ande) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p> <p>12. Home Building Act 1989</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and sections 69 & 71 of the <i>Environmental Planning and Assessment Regulation 2021</i>, in relation to residential building work, the requirements of the <i>Home Building Act 1989</i> must be complied with.</p> <p>Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.</p> <p>Condition reason: Prescribed condition under section 69 & 71 of the Environmental Planning and Assessment Regulation 2021.</p> <p>13. Dilapidation Reports</p> <p>A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining</p>

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Condition
the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the <i>Principal Certifier</i> for the development.

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

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

14. **Construction Noise & Vibration Management Plan**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.

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

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

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

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

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

15. **Construction Site Management Plan**

Condition
A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development: <ul style="list-style-type: none">• location and construction of protective site fencing and hoardings• location of site storage areas, sheds, plant & equipment• location of building materials and stock-piles• tree protective measures• dust control measures• details of sediment and erosion control measures• site access location and construction• methods of disposal of demolition materials• location and size of waste containers/bulk bins• provisions for temporary stormwater drainage• construction noise and vibration management• construction traffic management details• provisions for temporary sanitary facilities• measures to be implemented to ensure public health and safety.

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

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

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

16. **Construction Site Management Plan**

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

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

17. **Public Liability**

The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

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

DURING BUILDING WORK

Condition
18. Site Signage It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details: <ol style="list-style-type: none">a) showing the name, address and telephone number of the principal certifier for the work, and

Condition
<p>b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and</p> <p>c) stating that unauthorised entry to the work site is prohibited.</p>

The sign must be—

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

This section does not apply in relation to—

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

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

19. Restriction on Working Hours

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

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

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

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

20. Noise & Vibration

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

Condition
Condition Reason: To protect the amenity of the neighbourhood during construction.
21. Construction Site Management Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works. Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing. Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land. All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
Notes: <ul style="list-style-type: none">• <i>Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.</i>• <i>A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.</i>
Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.
22. Public Safety & Site Management Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times: <ol style="list-style-type: none">a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided

Condition
to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.
<i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i>
<p>h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p> <p>i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p> <p>j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6000 for further details.</p>

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

23.

Dust Control

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

Dust control measures and practices may include:

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

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

24.

Site Accessway

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

Condition	
	Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.
	Condition reason: To minimise and prevent damage to public infrastructure.
25.	<p>Excavations and Support of Adjoining Land In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p> <p>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
26.	<p>Complaints Register A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.</p> <p>Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.</p> <p>Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.</p> <p>Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.</p>
27.	<p>Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
28.	<p>Survey Report A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
29.	Occupation Certificate Requirements

Condition	
	An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> .
	Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
30.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
31.	<p>Post-construction Dilapidation Report</p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> (a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and (b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
32.	<p>Fire Safety Certificate</p> <p>A single and complete <i>Fire Safety Certificate</i>, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire</i></p>

Condition	
	<i>Safety) Regulation 2021</i> , and that adequate provision is made for fire safety in the premises for building occupant safety.
33. Structural Certification	A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i> . A copy of which is to be provided to Council. Condition Reason: To ensure the structural adequacy of the building and works.
34. Noise Control Requirements & Certification	The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i> . A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i> , NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent. A copy of the report must be provided to the <i>Principal Certifier</i> and Council prior to an occupation certificate being issued. Condition Reason: To protect the amenity of the surrounding area and residents.

OCCUPATION AND ONGOING USE

Condition	
35. Fire Safety Statement	A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i> , and in accordance with the <i>Fire Safety Schedule</i> for the building. The <i>Fire Safety Statement</i> is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the <i>Fire Safety Schedule</i> . A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire & Rescue NSW. Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , and that adequate provision is made for fire safety in the premises for building occupant safety.
36. External Lighting	External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. Condition reason: To protect the amenity of the surrounding area and residents.

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DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

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

DURING DEMOLITION WORK

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

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

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

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

Development Application Report No. D5/26

Subject: 23 Bona Vista Avenue, Maroubra (DA/1029/2025)

Executive Summary

Proposal: Amending DA for alterations and additions to an approved residential flat building to provide an additional studio apartment at ground level (increase from 4 to 5 apartments) including an affordable housing component of (2 x Studios), the expansion and increased height of the upper level attic to include a new living area, kitchen and bathroom, the addition of car stacker (increase of 4 to 5 spaces), internal reconfigurations and window changes on all levels, revision of balconies and minor roof changes.

Ward: Central Ward

Applicant: Mr T Mitrothanasis

Owner: Mr T Mitrothanasis & Mr P Mitrothanasis

Cost of works: \$285,324.52

Reason for referral: The development is subject to Chapter 4 'Design of residential apartment development' of the Housing SEPP 2021; the development contravenes the non-discretionary development standard for the minimum site area by more than 10% under Clause 19(2)a of the Housing SEPP 2021.

Recommendation

That the RLPP refuses consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/1029/2025 for Amending DA for alterations and additions to an approved residential flat building to provide an additional studio apartment at ground level (increase from 4 to 5 apartments) including an affordable housing component of (2 x Studios), the expansion and increased height of the upper level attic to include a new living area, kitchen and bathroom, the addition of car stacker (increase of 4 to 5 spaces), internal reconfigurations and window changes on all levels, revision of balconies and minor roof changes, at No. 23 Bona Vista Avenue, Maroubra 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, and fails to protect the amenity of residents.
2. Pursuant to Clause 16 – Housing SEPP 2021 (Additional Floor Space Ratio), the development is non-compliant with the maximum floor space ratio permitted under Clause 16 due to an incorrect calculation of gross floor area, contrary to the definition of GFA under RLEP 2012. As a result, the proposal exceeds the maximum achievable FSR, and no Clause 4.6 written request has been submitted to justify the variation, resulting in a jurisdictional impediment to approval.
3. Pursuant to Clause 19(2)(a) – Housing SEPP 2021 (Minimum Site Area), the development is proposed on a site that does not comply with the minimum site area requirement, with the subject site being more than 10% below the prescribed minimum. No written request has been submitted pursuant to Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP 2012), resulting in a jurisdictional impediment to approval.
4. Pursuant to Clause 19 – Housing SEPP 2021, the development is non-compliant with parking requirements as the proposed mechanical car stacker does not provide sufficient clearance to allow safe and independent operation and cannot be relied upon to satisfy the required parking provision.

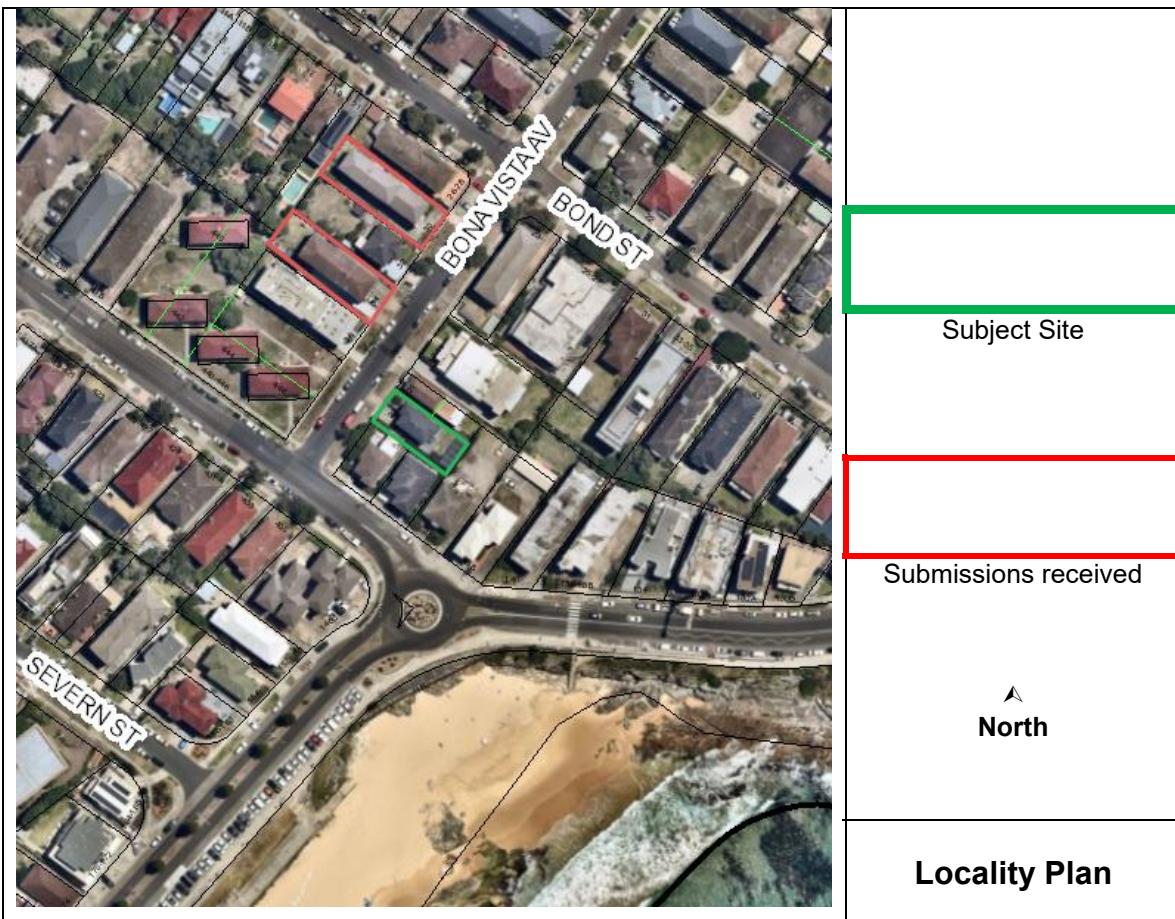
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5. Pursuant to section 20(3) of the SEPP (Housing) 2021, the proposed development is incompatible with the character of the local area. In addition, the Applicant has failed to demonstrate that if the precinct is undergoing transition, that the development is compatible with the desired future character of the precinct.
6. Pursuant to Clause 2.11 – SEPP (Resilience and Hazards) 2021, the development is non-compliant with the coastal use area objectives due to unacceptable visual bulk associated with the proposal including increased overshadowing and visual dominance. The proposal fails to minimise adverse impacts on coastal views and residential amenity.
7. Pursuant to section 147 of the SEPP (Housing) 2021, the proposed development was not supported by the Randwick Design Excellence Advisory Panel in that the quality of the amending DA design was inadequate for the proposed building and context. In addition, the development fails to demonstrate consistency with the following schedule 9 design principles:
 - a. Principle 1 – Context and Neighbourhood Character: The built form does not integrate with the existing streetscape and leads to effective “site isolation” of adjoining site to the north.
 - b. Principle 2 – Built Form and Scale: The development does not meet housing SEPP FSR standard, the bulk, massing, and insufficient separation create an overbearing and visually intrusive built form inconsistent with a locality comprised in most instance on the higher side of sites and along this side of Bona Vista, 2-3 storey development.
 - c. Principle 6 – Amenity: The inadequate separation results in unacceptable visual and acoustic privacy impacts, overshadowing, and a loss of solar access to adjoining and even downstream properties. This contravenes the ADG requirement to give proper consideration of solar access to neighbouring properties. The proposal also results in adverse view loss impacts.
8. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the following controls in the Randwick Development Control Plan 2013:
 - a. Part B7: Transport, Traffic, Parking and Access
 - i. Section 3.2 ‘Vehicle parking rates’.
 - b. Part C2: Medium Density Residential
 - i. Section
 - ii. Section 4.1 ‘Building façade’.
 - iii. Section 4.2 ‘Roof design’.
 - iv. Section 4.4 ‘External wall height’.
 - v. Section 5.5 ‘View sharing’.
9. 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.
10. Pursuant to section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest having regard to the significant and numerous non-compliances with relevant planning controls, and the objections raised in the public submissions.

Attachment/s:

Nil



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1. Executive Summary

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

- The development is subject to Chapter 4 'Design of residential apartment development' of the Housing SEPP 2021 as the proposed development is for the erection of a new building that is 3 or more storeys and contains at least 4 dwellings.
- The development contravenes the non-discretionary development standard for the minimum site area by more than 10% under Chapter 2, Clause 19 (2)a) of the Housing SEPP 2021.

The proposal seeks consent to amend DA/637/2020 (including Modification A) for a residential flat building by increasing the number of dwellings from four to five, reallocating the Affordable Housing Component from a single first-floor apartment to two studio apartments at ground and first-floor levels, and making internal and external changes to the approved built form. The most significant amendments relate to increased gross floor area and height, raised basement and ground floor levels, an expanded attic form, and an increase in basement parking from four to five spaces via a mechanical car stacker.

The amending development application relies on the incentive provisions of the Housing SEPP, which superseded the former SEPP ARH 2009 applicable to the parent consent and permits increased floor space ratio and height bonuses, subject to compliance with statutory controls and design requirements.

Nine (9) unique submissions by way of objection were received.

The assessment identifies multiple substantive and jurisdictional non-compliances, including exceedance of the maximum achievable floor space ratio due to an incorrect gross floor area calculation, non-compliance with the minimum site area requirement, reliance on a non-compliant and unsupported mechanical car stacker to satisfy parking provisions, and failure to demonstrate

compliance with Clause 20 of the Housing SEPP relating to character, scale and amenity. No written request has been submitted pursuant to Clause 4.6 of Randwick Local Environmental Plan 2012, preventing lawful consideration of the identified departures from development standards.

The amended proposal results in a material increase in building height and bulk relative to the approved development, presenting as a larger than normal three storey form within a streetscape predominantly characterised by three-storey residential flat buildings on the lower eastern side of Bona Vista Avenue. These changes give rise to increased adverse impacts on neighbourhood amenity, including visual dominance, overshadowing, and increased view loss toward the ocean, beach, foreshore and headland.

A detailed view sharing assessment undertaken in accordance with the planning principle established in *Tenacity v Warringah Council* concludes that view impacts range from minor to severe, with several affected apartments experiencing significant interruption to expansive and highly valued coastal views. These impacts arise from avoidable design changes as identified by the Design Excellence Advisory Panel having particular regard to the site and neighbourhood context and comparison with the approved form.

Key issues arising from the assessment include the FSR exceedance, inappropriate building scale and streetscape response to site conditions on this side of Bona Vista Avenue, design excellence matters raised by the Design Excellence Advisory Panel, substandard minimum site area, unacceptable car stacker dimensions resulting in non-compliance with parking requirements, and adverse amenity impacts including view loss, and additional adverse overshadowing and visual bulk. The absence of a Clause 4.6 written submission in respect of the minimum site area, FSR exceedance and parking shortfall represents a jurisdictional impediment to approval.

For the above reasons, the proposal is recommended for refusal.

2. Site Description and Locality

The site is legally described as Lot A DP 346056 and is known as 23 Bona Vista Avenue, Maroubra. The site has 12.19m frontage to Bona Vista Avenue to the west and a total site area of 371.6m². The site has a fall to the rear of approximately 2.0m measured from RL 18.30 to RL 16.72.

The site currently comprises a three (3) storey residential building in brick finish with a single garage. The site has a vehicle crossing off Bona Vista Avenue and a concrete driveway. Council's records indicate that the site was approved as a residential flat building accommodating 2 x 2-bedroom units.

The site and locality are zoned R3 Medium Density Residential under the Randwick Local Environmental Plan 2012 and the key development standards of height and density generally allow for 3/4 storey scales.

Maroubra Beach and other recreational areas are located to the south of the site along Marine Parade. The site is identified as being within a foreshore scenic protection area pursuant to clause 6.7 of RLEP 2012.

The surrounding area contains a mix of residential flat buildings, single dwellings and along Marine Parade examples of shop top housing development and multi storey residential flat buildings. The surrounding area has sloping topography which generally falls from west to east towards the coast and from north down to the south. The size and scale of buildings are generally higher at the lower levels of sites and in relation to Bona Vista Avenue, the higher side of the street is the western side and the lower side of the street is the eastern side in which the site is located. This generally translates into higher sizes of buildings on the western side and smaller sized buildings on the eastern side.

Site photos:



Street view of site showing existing brown brick building on the subject site and adjoining building to the north at No. 21 Bon Vista Avenue (Source: Google Maps)



Aerial view of the site and surrounding area (Source: Council system)

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Close up aerial view of site and adjoining development showing contours (source: Council system)



Oblique view looking north west of the site and surrounding area (Source: Nearmaps)



Oblique view looking south east of the site and surrounding area (Source: Nearmaps)

Site photos



Looking south towards SS rear yard at rear buliding elevaiton of No. 456 Maroubra Road line and at right SS sunken outdoor space under rear awning.



Photo taken from No. 17-19 Bona Vista's rear yard shows the rear of No. 21 Bona Vista (foreground) and No. 23 Bona Vista in background.

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Photo taken from front southern side of SS looking south-easterly and east showing the rear of buildings on properties fronting Maroubra Road and whose rear boundary backs onto the southern boundary of the subject site.

3. Relevant History

Parent DA: DA/637/2020 for demolition of existing structures & construction of a four (4) storey residential flat building (reduced floor plate at fourth storey), containing four (4) apartments, basement parking (4 spaces), landscaping and associated works under SEPP Affordable Rental Housing (ARH) approved by the Land and Environment Court pursuant to section 34 of the Land and Environment Court Act 1979 on 22 January 2022. APT 3 - a 76.7m² first floor is the affordable rental unit to be managed by CHP for a minimum 10-year period pursuant to SEPP ARH 2009.

- Approved with FSR of 1.03:1 (383.5m²) which complied with the maximum SEPP ARH of 1.1:1 (0.9:1 plus 0.2:1 bonus-408.76m²) and a stated variation of 150mm above the 12m LEP maximum height control at the leading eastern rear of building.

Modification Application (S4.56): DA/637/2020/A approved 25 October 2022 reconfigurations and extensions across all levels of the building. Key modifications include increasing the basement's size, extending kitchens and living areas on various floors, and relocating internal walls to increase floor areas. The attic level also saw a new balcony and window change.

Key amended/deleted components:

- Approved amended plans deleted additional tandem parking space (from 4 to 5) due to insufficient size.
- Approved 5.56m² additional GFA and an FSR of 1.114:1 (414.32m²) exceeded the maximum SEPP ARH FSR of 1.10:1 by 1.36%. This mod A approved GFA was reduced by 2m² (from originally sought 7.76m² and total 416.52m² of GFA) by way of condition 2b requiring a 7.028m rear setback for the first-floor level as this rear extension would result in direct loss of views of the beach and promenade from No. 21 Bona Vista Avenue's rear balcony. No view loss was anticipated from the ground and second floor rear additions as they were below and above the view lines from the rear balcony of No. 21 Bona Vista Avenue.
- Other Mod A approved extensions included:
 - Basement (rear),
 - Southern side at first floor level at front family room reduced setback from 4.8m down to 3.9m.
 - Extending rear part of northern walls (bath and kitchen) closer to the side boundary (from 2.3m down to 2m) and

- Rear extensions at ground and second floor level noting the proposed mod A sought partial extension at the rear of the first-floor level was not supported with condition 2b requiring 7.028m rear setback.
- Add balcony to front of attic
- The approved proposed GFA shall be 416.52m² resulting in a FSR of 1.12:1 and the proposal as modified did not comply with the maximum FSR standard applicable to the site, however it was supported on the basis of condition 2b being imposed requiring rear setback for first floor to retain certain views from rear of adjoining neighbour at No. 21 Bona Vista.
- No change to height (RL30.90).

Excerpts of the approved modification application have identified in the images in the proposed section further below.

On 26 November 2021, Housing SEPP came into force replacing the previous SEPP Affordable Rental Housing 2009.

4. **Proposal**

The Amending Development Application seeks approval to amend the existing development consent as modified (DA/637/2020/A) for a residential flat building at 23 Bona Vista Avenue, Maroubra.

This Amending DA proposes modifications to increase the number of units from 4 to 5, reallocate the Affordable Housing Component (AHC) from one unit at first floor level to two units at the front of ground and first floor level (APT 1 & APT 3), and make internal and external changes to the built form (GFA and Height) across all levels - the most prominent relating to raised levels, additional GFA to the attic, and additional floor area at ground level at the front. The proposal also increases basement parking provision from 4 to 5 by way of a car stacker.

Affordable housing component - Housing SEPP

The proposed amending DA relies on the added incentive provisions of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), which supersedes the since repealed SEPP ARH 2009 that applied to the parent consent (DA/637/2020) which now allows for increased floor space bonuses (from 20% to 30%) and bonuses applying to building height subject to minimum Affordable Housing Components being included in the in-fill residential development.

The parent consent had one AH unit APT 3 - 79m² and the amending DA proposes instead 2 ground level affordable housing units (AHC – 79.2m²) as follows:

- APT 1 studio 38.3m² and
- APT 3 studio 40.9m²

Floor-by-Floor Description

Basement Level

- Basement parking from 4 to 5 car spaces and services retained
- Additional car space provided via an independent car stacker system (Engineer clearance issue)
- Waste storage and bicycle parking retained
- No change to basement footprint or excavation extent although height is increasing.

Ground Floor

- Internal reconfiguration of approved layout from 3-bed unit 108m² to two units:
 - APT 1: Studio 38.3m² AHC. Additional GFA to approved built form at the front
 - Apt 2: 2 bed unit (78.7m²) rear
- Increased height of ground level by 1.17m raised ground floor level (RL18.60 to R19.77)
- Both units (117m²) are allocated as affordable housing component (AHC) per Housing SEPP
- Reduction in built form at the rear relative to the approved scheme

- Private open space provided to ground floor dwellings at front for APT 1 studio and rear elevated terrace
- Pedestrian entry location retained

First Floor

- Two units comprising:
 - APT 3: Studio 40.9m² (AHC)
 - APT 4: 2-bed 79.1m²
- Reduction in built form at rear to show compliance with condition 2b of Mod A (DA/637/2020/A) requiring minimum 7.028m eastern rear setback
- Rear apartment converted from affordable housing unit into marketable unit.
- Adjustments to window locations
- Raised floor level by 1.17m from 21.70 to 22.87
- Balconies retained generally consistent with approved design

Second Floor

- APT 5 – 3-bed unit 129.9m²
- Internal layout changes converting front living room into bedroom
- Extension and reduction of rear building line
- Changes to windows and rear balcony reduction (19.5m² down to 13.9m²)

Attic / Upper Level

- (APT 5 – Attic containing rumpus room 57.6m²)
- Extension of the attic level to rear and southern side increasing floor area from 29.4m² to 57.6m² (recalculated as 70.78m² - See note below).
- Reconfigure attic design from asymmetrical gable pitch roof (higher side to the north) into a more A frame design roof noting that the higher side albeit only minimally is now located at the southern side.
- Increase overall height by 2m from 30.90 to 32.90 and northern and southern side curved walls by 1.5m and 2.47m.
- Adjustments to skylights and roof windows
- Attic remains set back from lower storeys front and rear building lines.

Roof and External Works

- Changes to roof geometry and ridge alignment from predominately asymmetrical with a lower southern side plane to less asymmetrical more in line with A frame form with the slightly higher side at the southern side.
- Extend roof including balcony to the rear including balcony
- External materials and finishes remain consistent with the approved development
- Building services integrated within the roof form
- Increase overall height by 2m from RL30.90 to RL32.90 and northern and southern side curved walls by 1.5m and 2.47m.
- Raise floor levels by 1.17m resulting in the ground level being around #m above street level
- Increase fence height at the southern side adjoining No. 452 Maroubra Road by 870mm from RL19.84 to RL 20.71 resulting in a total fence height of between 2.88m and 3.04m (RL20.71 – RL's 17.83/17.73/17.67) along the front of the subject site.

Excerpts of the proposed amending DA are produced below which also shows outlines of the approved parent development as modified.

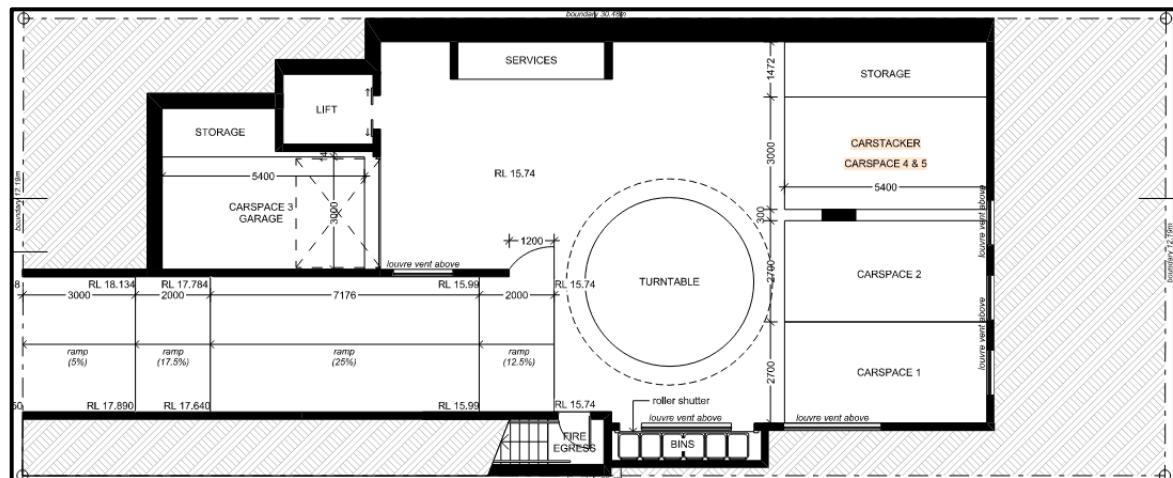


Figure 1: Basement showing carstacker added. No change to floor level (Source: Archispectrum).

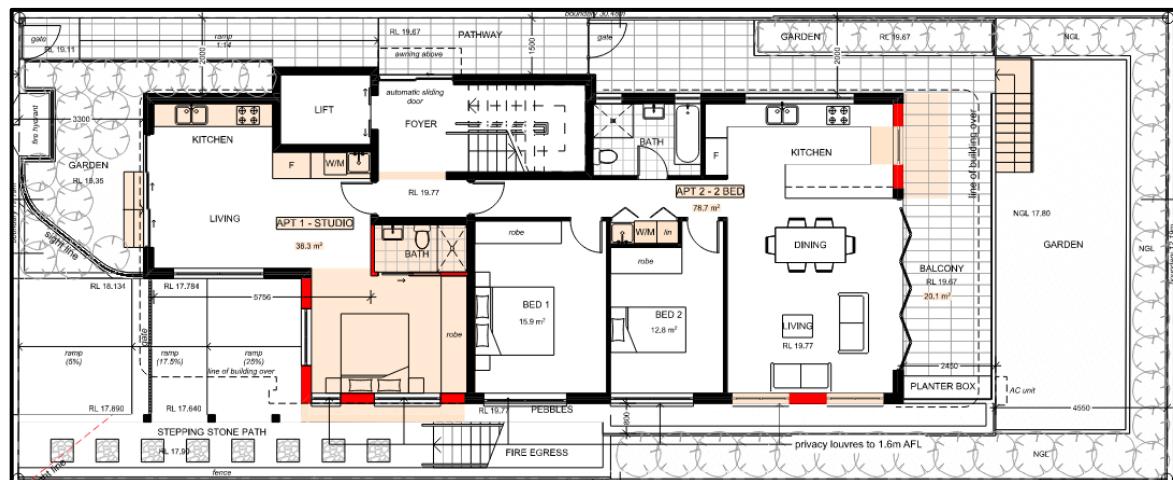


Figure 2: Ground level showing added GFA at front and deleted area at rear noting ground level raised by 1.17m from RL18.90 to RL19.77; rear garden lowered by 17cm (Source: Archispectrum)

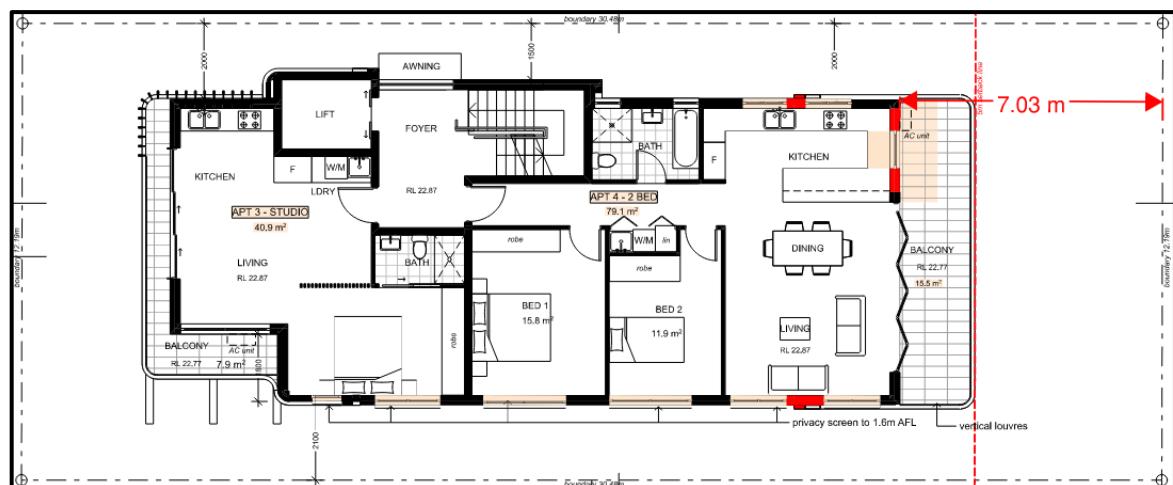


Figure 3: First floor level showing deleted area at rear (required by Mod A approval) and window changes. Raised ground level by 1.17m (Source: Archispectrum)

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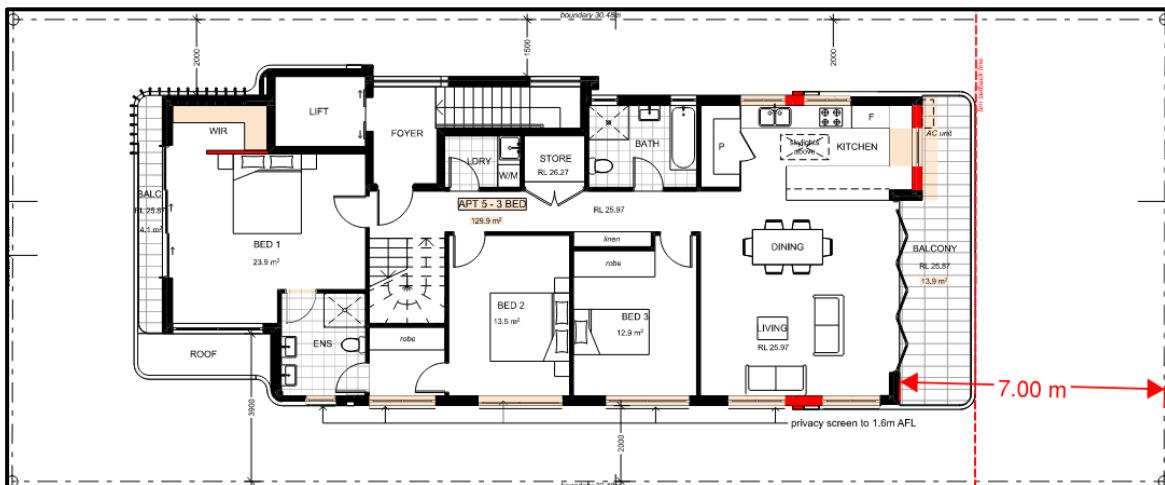


Figure 4: Second floor level showing reduced rear, window changes and reconfiguration (Source: Archispectrum).

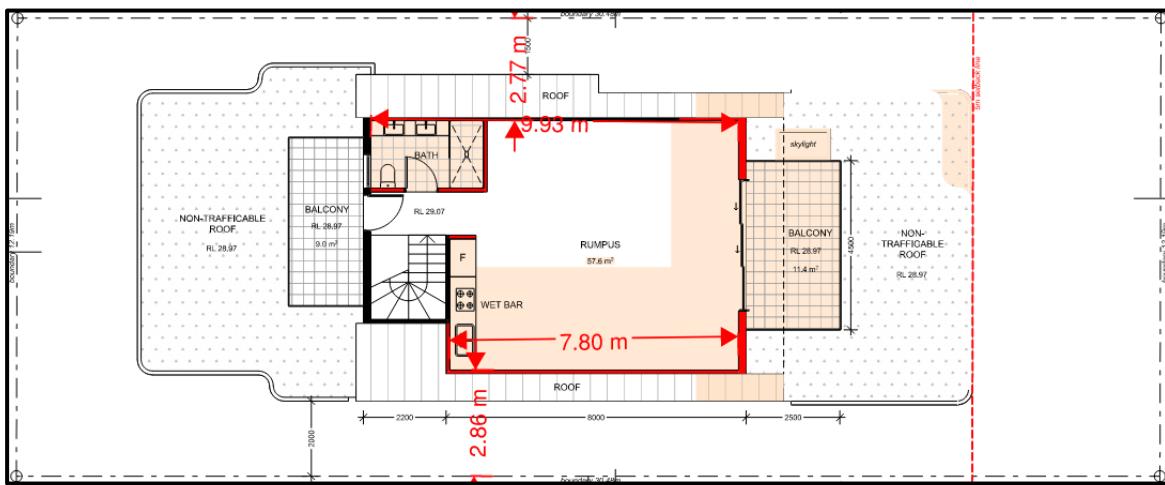


Figure 5: Attic level showing added floor area to south and eastern ridge side shifting balcony further to rear. Note: areas enclosed by walls 1.4m in height have not been included at the northern and southern sides of the attic space (Source: Archispectrum)

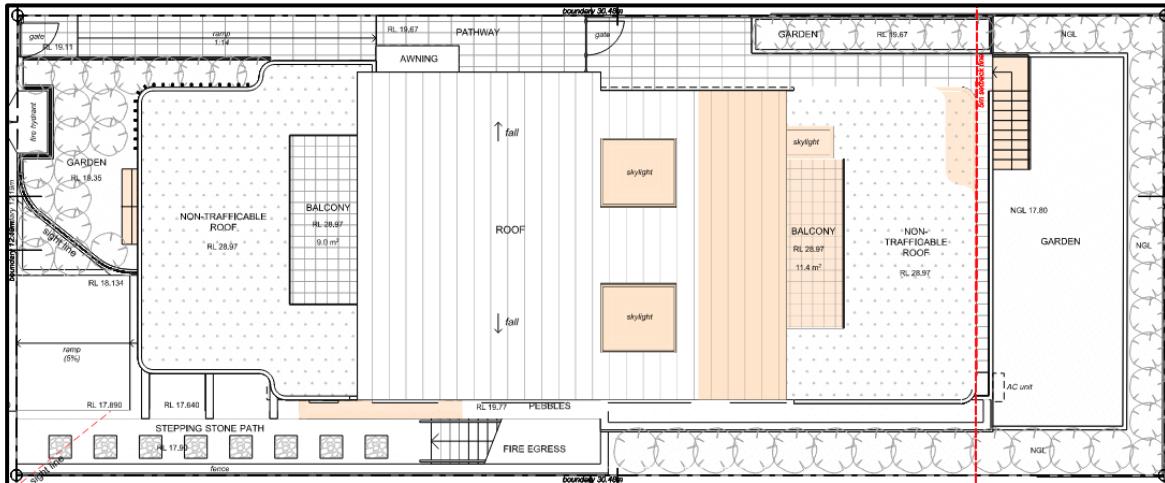


Figure 6 : Roof showing added roof area (Source: Archispectrum)



Figure 7: Street side western elevation showing at left the proposed and at right the approved form noting image at left shows the approved in pink dashed line (Source: Archispectrum).

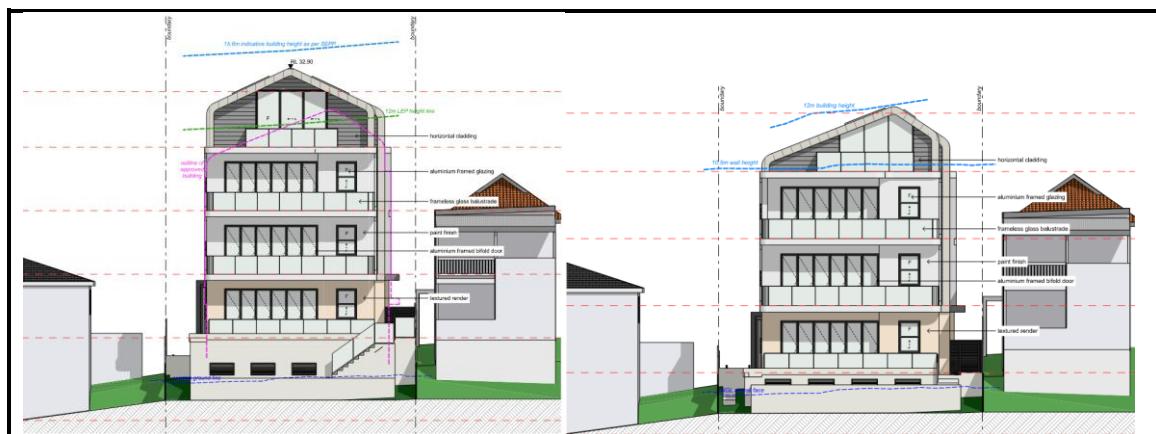


Figure 8: Rear eastern elevation showing at left the proposed and at right the approved noting image at left shows the approved in pink dashed line (Source: Archispectrum)

D5/26

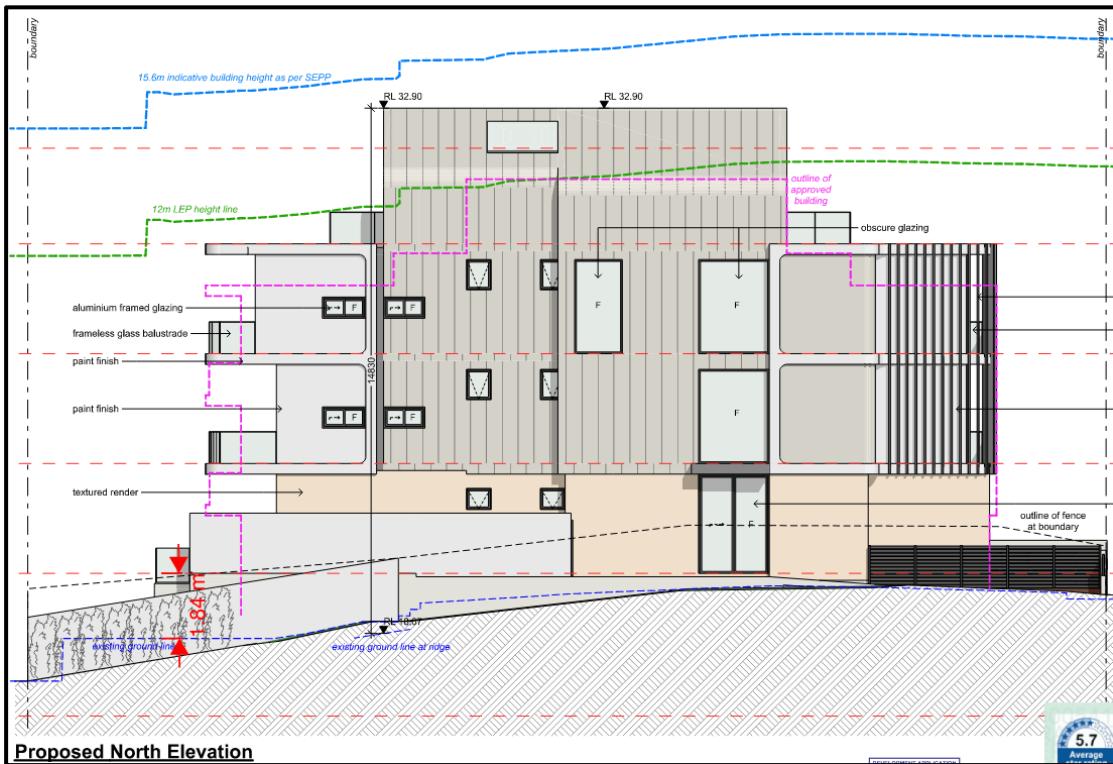


Figure 9: Northern higher side elevation showing in pink dashed line approved parent DA (Source: Archispectrum)



Figure 10: Southern lower side elevation showing in pink dashed line approved parent DA area (Source: Archispectrum)



Figure 11: Section at left showing proposed and at right approved Section (Source: Archispectrum)

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5. Notification

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

Support:

1. 2/454 Maroubra Road – The Occupier

Objections:

1. Resident of 30 Bona Vista Avenue (unit number not specified)
2. 1/30 Bona Vista Avenue (unit number not specified)
3. Owner of apartment 30 Bona Vista Avenue (unit number not specified) – proforma letter
4. 1/34 Bona Vista Avenue
5. 8/34 Bona Vista Avenue
6. 4/34 Bona Vista Avenue
7. 7/34 Bona Vista Avenue
8. Resident of Bona Vista Avenue
9. Unknown Address

Issue	Comment
Insufficient Car parking and increased traffic congestion	<p>By virtue of the insufficient clearance for the car stacker it is not considered that parking complies with the requirements of the Housing SEPP.</p> <p>Given the shortfall in parking, it is considered that the proposal will unreasonably result in additional on-street parking demand.</p>
Challenges the concept of 'Affordable Housing' and requests the removal of AHC of the development.	Affordable housing has been approved as part of the original parent consent and this application seeks to utilise the benefits of the current policy on bonus provisions that encourage the provision of in-fill affordable housing. The mechanism for rental of affordable housing is clearly articulated in the Housing SEPP requiring the nominated units to be managed by a registered community housing provider.
Landscaping should be increased.	The proposal provides a larger area of landscaping than the required under the Housing SEPP non-discretionary development standards.

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Issue	Comment
Further views loss being lost as a result of the proposed increased height and density.	Noted, see view sharing assessment in the Key Issues section of this report and associated assessment of relevant key issues relating to design requirements under the Housing SEPP and DEAP referrals comments required to be considered under Clause 147 of the Housing SEPP.
Visual character and design quality – request change of colour preferring lighter colour and consideration by Design Review panel.	The colour and materials are similar to the original approved scheme, and the application has been the subject of referral comments from the constituted design review panel known as the Design Excellence Advisory Panel – see comments in referral section of this report under DEAP.
Bulk and scale Height is incompatible with the streetscape Request deletion of at least one level Context is 2-3 storeys Exceeds the R3 zoning provisions.	Noted, these aspects of the proposed development area assessed through this report noting the key issues section contain an assessment of the design quality required by Clause 20 of the Housing SEPP and design requirements for residential flat buildings notably Design review panel comments having regard to Schedule 9 design quality principles. Overall, it is agreed that the proposal is excessive in bulk and scale and will not fit into the context of the site and the surrounding area.
Impacts during construction phase	The construction phase of a development will result in some impacts; however, these can be suitably managed by adhering to certain construction management and traffic conditions of consent.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Biodiversity and Conservation) 2021

The aims of Chapter 2 are:

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

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

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – ‘Coastal Use Area’

Clause 2.11 of the SEPP requires that consent cannot be granted to development within the Coastal Use Area unless the consent authority has considered potential adverse impacts and is satisfied that the proposal avoids, minimises, or mitigates such impacts.

The following comments are provided:

- a) Public access – The works occur entirely on private land and do not affect safe access to the foreshore, beaches, headlands or rock platforms.
- b) Visual relationship between development and the coast - Clause 2.11 requires development to avoid or minimise adverse impacts on views toward the ocean, foreshore and headland.

The proposal increases apparent height and bulk through raised basement and ground floor levels and an expanded attic. Although described as three storeys plus attic, the development presents when viewed from the street and rear as appreciably higher and larger than development along this side of Bona Vista Avenue including similar medium density residential developments. The perceived scale of the development along Bona Vista Avenue will be dominant and visually detract from the Coastal context. This results in increased view loss toward the ocean, foreshore and headland from nearby coastal-facing apartments, as identified by the applicants view loss images and commented on by the Design Excellence Advisory Panel.

- c) Coastal amenity and scenic quality - Clause 2.11 requires development to respond appropriately to coastal landform and topography to minimise visual impacts.

The site slopes downward from the street to the rear. Comparable developments in the locality typically step with the topography and sit lower within the ground plain relative to street level along this side of Bona Vista Avenue. In contrast, the proposal amends the existing approval, which is consistent with this approach, instead in this amending DA its seeking raised ground levels, resulting in greater height at both the street frontage and rear and in the context of this side of Bona Vista will unnecessarily amplify visual bulk within the streetscape and Coastal Use Area. The Design Excellence Advisory Panel recommended retaining the approved basement and ground floor levels to reduce these impacts.

Overall, the proposal does not impact physical access to the coast, however the increased built form increases apparent height, bulk and visual dominance within the Coastal Use Area that is inconsistent with the context of the surrounding built form along this lower side of Bona Vista Avenue. The Design Excellence Advisory Panel comments indicate that the proposal does not adequately avoid or minimise adverse impacts on coastal amenity, scenic quality or the visual relationship between development and the coast. Accordingly, the consent authority cannot be satisfied that the development complies with Clause 2.11 of the SEPP (Resilience and Hazards) 2021.

Chapter 4 – ‘Remediation of land’

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

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

6.4. SEPP (Housing) 2021

Chapter 2 – ‘In-Fill Affordable Housing’

The Housing SEPP permits additional floor space ratio and height only where development complies with statutory requirements and non-discretionary standards.

See Appendix 2 for a detailed assessment against each relevant clause of the in-fill affordable housing provisions of the Housing SEPP.

In summary, the proposal is non-compliant with Chapter 2 of the Housing SEPP for the following reasons:

Clause 16 – Additional Floor Space Ratio

The development exceeds the maximum achievable FSR permitted under the Housing SEPP due to an incorrect calculation of gross floor area, including the omission of enclosed attic spaces areas required to be counted as GFA under the Randwick LEP 2012. As a result, the proposal exceeds the maximum FSR available under the Housing SEPP. No Clause 4.6 written request has been submitted, resulting in a jurisdictional impediment to approval.

Clause 19(2)(a) – Minimum Site Area (Non-Discretionary Development Standard)

The subject site is more than 10% below the minimum site area required under the Housing SEPP. No Clause 4.6 written request has been submitted to justify the non-compliance, resulting in a further jurisdictional impediment to approval.

Accordingly, the proposal cannot lawfully rely on the bonus provisions of Chapter 2 of the Housing SEPP.

Chapter 4 – ‘Design of Residential Apartment Development’

Chapter 4 of the Housing SEPP requires residential apartment development to demonstrate design quality through consistency with Schedule 9 Design Quality Principles, supported by advice from a Design Review Panel or the Design Excellence Advisory Panel (DEAP). See Appendix sections 2 for a detailed assessment table and referral section of this report.

In summary, the proposal fails to satisfy the requirements of Chapter 4 in that:

- The amending development application was not supported by the Design Excellence Advisory Panel noting concerns raised in regard to Context and neighbourhood Character, built form and scale and Amenity key design quality principles under Schedule 9 of the SEPP.
- The design does not demonstrate that the additional bulk and scale sought under the Housing SEPP results in a high-quality design outcome appropriate to the site and locality.
- The proposal introduces increased height, bulk, raised ground levels and an expanded attic form that adversely affect neighbourhood character and residential amenity particular regard to visual bulk, additional adverse overshadowing and view loss.

Apartment Design Guide (ADG) – Key Non-Compliances

The proposal does not comply with the Apartment Design Guide and fails to achieve acceptable residential amenity outcomes, including:

- Building separation and setbacks, resulting in unacceptable visual and acoustic privacy impacts.
- Solar access and overshadowing, with insufficient consideration given to the impact on neighbouring properties.
- View sharing, with moderate to severe view loss impacts arising from discretionary design changes rather than unavoidable site constraints.

- Attic design and internal amenity, with expanded attic floor space increasing head-strike risks and contributing to poor internal amenity outcomes.

These ADG non-compliances directly contribute to the adverse amenity impacts identified under Schedule 9 of the Housing SEPP and reinforce the conclusion that the proposal represents an overdevelopment of the site.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned R3 medium density residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

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

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

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

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

- The proposed development application does not recognise the desirable elements of the existing streetscape and built form in seeking additional GFA and uplift to the approved part-3 part-4 storey building proposing a form that has a profile of around 3 and a half to part four and a half storeys which is a direct result of the raised ground levels and enlarged attic design.
- The proposal adopts a built form response derived from development on the opposite (western) side of Bona Vista Avenue, where the street level represents the localised low point of those sites and larger building forms are accommodated well above street level. In contrast, the subject site occupies the higher part of its landform, which warrants a more restrained built form response, consistent with development such as No. 17–19 Bona Vista Avenue whose ground level sits relatively close to street level rather than above it. By replicating the built form on the opposite side of the street, the proposal results in an inappropriate response to the site conditions and creates an excessive and visually dominant bulk that is incompatible with the established streetscape character and the desired future character of this side of the street.
- The proposed development application does not protect the amenity of residents in failing to provide any communal open space, and compliant off-street parking, for the future occupants of the building and results in adverse view loss to neighbouring properties.

Therefore, the proposed development is recommended for refusal.

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

Clause	Development Standard	Proposal	Compliance
Clause 4.3: Building Height (max)	12m Chapter 2 of the Housing SEPP for infill affordable housing prevails which allows a development to seek an additional 30% bonus if an appropriate affordable housing component is provided (i.e. a	14.93m In either of the two scenarios provided in the SEE and architectural plans at least	Yes complies.

	maximum height of 15.6m if 15% AHC is provided).	15% of the GFA is provided as an AHC.	
Clause 4.4: Floor Space Ratio (max)	<p>0.9:1</p> <p>The development can seek an additional 30% bonus to maximum 1.17:1 if an appropriate affordable housing component is provided (i.e. 15% AHC provided).</p>	<p>1.205:1</p> <p>Whilst the 15% AHC is provided, the proposal exceeds the maximum FSR due to unaccounted for GFA in the attic space, exceeding the maximum standard by 0.035:1 or a 2.99% variation (or 13.2m²).</p>	<p>No.</p> <p>The applicant has not submitted clause 4.6 written submission seeking a variation to this standard.</p>

6.5.1. *Clause 6.2 - Earthworks*

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

The amending DA seeks additional fill to the northern side which generally matches the ground level on the adjoining site to the north. No further earthworks are proposed. As such, Council is satisfied that the development is consistent with clause 6.2.

6.5.2. *Clause 6.4 – Stormwater Management*

Clause 6.4 requires the consent authority to be satisfied that the development in residential land 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.

6.5.3. *Clause 6.7 - Foreshore scenic protection area (FSPA)*

The site is located within the Foreshore Scenic Protection Area (FSPA). Clause 6.7 of the Randwick LEP requires development in this area to be sited, designed and scaled to minimise visual impact on the coastline, protect scenic quality, and ensure built form does not dominate views from public areas, streets or the broader coastal setting.

The current amending DA does not satisfy these objectives.

The amended proposal reintroduces excessive bulk, scale and wall heights that were previously identified as unacceptable, and which required reduction through Section 34 conciliation to achieve the approved original DA scheme. The proposal increases size and scale through raised basement and ground floor levels, a bulkier attic form and increased overall wall heights on a narrow 12.19m wide site that is inherently constrained.

These changes result in large, visually dominant wall planes with limited articulation, particularly along the side elevations, and re-establish a built form that is highly exposed within the foreshore visual catchment. When viewed from public areas along Bona Vista Avenue, Maroubra Road and the surrounding coastal setting, the development presents as an overbearing and visually intrusive form that fails to minimise coastal visual impacts.

The proposal further relies on floor space ratio uplift and variations on an undersized site, intensifying development beyond the site's capacity to accommodate additional bulk without adverse scenic impacts. Rather than responding to the coastal context and topography, the development elevates and enlarges the built form, undermining the scenic qualities the Foreshore Scenic Protection Area is intended to protect.

Consistent with the Coastal Use assessment, the proposal increases apparent height, bulk and visual dominance and does not adequately avoid or minimise adverse visual impacts on the coastal environment.

Overall, it is considered that this amending DA fails to satisfy the objectives of Clause 6.7 of the Randwick LEP. The increased size, scale and wall heights reintroduce unacceptable visual impacts on the foreshore and surrounding public domain, contrary to the scenic protection purpose of the FSPA. Accordingly, the proposal is recommended for refusal.

6.5.4. *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.

7. Development Control Plans and Policies

7.1. Randwick Comprehensive DCP 2013

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

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

The proposed development is inconsistent with a number of the built form controls of the DCP, which results in adverse amenity impacts on adjoining and neighbouring dwellings, further to which do not achieve compliance with the relevant controls. Such non-compliances result in a development that is incompatible with the locality of the area.

The relevant provisions of the DCP are addressed in Appendix 4.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in Sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Draft Part C2 of the DCP for Medium Density residential development. See Appendix 5 of this report.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal has been assessed against the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in Key Issues section below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the dominant character in the locality.</p> <p>The proposal will result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. That being said, the applicant has failed to demonstrate that there is sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is not considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The 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.

8.1. Discussion of Key Issues

The following is a discussion of the key issues as it relates to the following:

- Housing SEPP:
- View Sharing Assessment.

Housing SEPP:

Clause 16 - Affordable Housing Component and additional floor space

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

The development application provides 2 units (APT 1 & 3) totaling 79.2m² to be allocated as the affordable housing component which represents 18.2% of the stated GFA, however the applicant relies on incorrect calculation of the GFA omitting 13.2m² of enclosed space in the attic which measures at least 1.4m in height. In particular, omitted enclosed internal areas measured at a height of 1.4 metres above the floor level which are the required to be included under the definition of GFA in the LEP include:

- 9.13m² along the northern side of the rumpus room
- 4.05m² along the southern side of the rumpus room

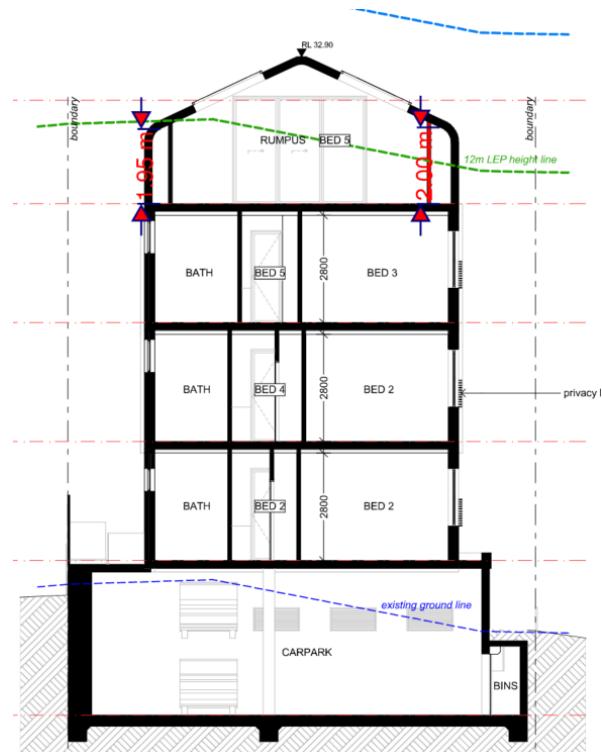


Figure 12: Short section showing additional floor area to the northern and southern sides of the attic floor (Source: Archispectrum)

The 13.2m² added to the stated GFA results in a total GFA of 447m² which represents an FSR of 1.205:1 exceeding the maximum FSR 1.17:1 by 0.035 or 2.99% variation to the 30% bonus afforded that afforded by a minimum 15% AHC of the GFA.

This non-compliance further reinforces the need for a reduced and more restrained built form response as assessed throughout this report.

A clause 4.6 written submission has not been provided therefore it is a jurisdictional matter that impedes determination for approval by the RLPP. The requirements for a Clause 4.6 Statement is a jurisdictional matter, and in the absence of it, the development application is recommended for refusal.

Clause 19 – Minimum Site Area (Non-Discretionary Development Standard)

The site has an area of 371.6m², which is substantially below the minimum site area of 450m² required under Clause 19(2)(a) of the Housing SEPP.

The applicant seeks to rely on the existence of a parent consent, however it is Council's view that that the existing consent does not remove the requirement to assess compliance with this non-discretionary standard. Council's practice requires any non-compliance with non-discretionary

development standards to be addressed by a written request pursuant to Clause 4.6 of the LEP in to seek a variation. For this reason, the application cannot be determined other than refused as a jurisdictional requirement.

Further, the shortfall in site area is considered a key material consideration under the Housing SEPP. In this respect, Council and the Design Excellence Advisory Panel (DEAP) consider that, the undersized lot necessitates a more restrained built form response to the site conditions notably the prevailing built form along this side of Bona Vista on similarly sloping sites away from street level.

Clause 19 – Minimum Dwelling Parking

The proposal provides 5 parking spaces, exceeding the Housing SEPP requirement of 4.3 spaces, solely through the introduction of a mechanical car stacker. However, Council's Development Engineer does not support the proposed stacker due to insufficient clearance.

The basement floor-to-ceiling height at the stacker location is 3.73m, which is below the minimum 3.9m clearance required to enable safe and independent operation for regular passenger vehicles. The stacker would be limited to small and medium-sized vehicles and is not suitable for allocation to independent dwellings.

As the additional parking space is dependent on a non-compliant and unsupported car stacker, it cannot be relied upon as a valid parking solution under the Housing SEPP. Accordingly, the proposal fails to demonstrate compliance with the parking requirements that justify the increased density sought.

It is noted that in accordance with Part B7 of the Council DCP, 1 visitor parking space is required for every 4 dwellings in a residential flat building. The non-discretionary development standards relating to parking are for the dwellings, not the building in the way that visitor parking is required. As such, the requirement for a visitor parking space is required. The proposal fails to provide such a space and therefore fails to further comply with parking requirements.

Clause 20(3): Compatibility with desirable elements of the character of the local area

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

- Site and Surrounding Area

The subject site slopes by approximately 3 metres from the northern street frontage to the rear boundary. Under the approved parent development consent, the site accommodated a moderate three-storey building with a subordinate attic, with ground floor levels maintained close to street level. This approach appropriately responded to the site's topography and the established streetscape character along this side of Bona Vista Avenue.

The surrounding area is characterised predominantly by three- and four-storey residential flat buildings, with development generally stepping with the natural landform. Along Bona Vista Avenue, buildings on the higher western opposite side typically present as four storeys, while development on the lower eastern side, where the subject site is located, generally presents as a more restrained three-storey forms with moderated height and bulk over the higher parts of the site.

- Assessment of the Amending DA

The amended proposal, while described as three storeys plus attic, presents visually as an excessively large part three/part four-storey form at the street frontage and a part four/part five-storey form to the rear. This outcome arises from the following changes introduced by the amending DA:

- Increased basement ceiling height,
- Elevated ground floor levels, increasing the building's presentation above street level from approximately 2.75–3.78m to 3.9–5.0m, and

- A wider and more dominant attic form.

Collectively, these changes result in an approximately 2-metre increase in ridge height and increased wall heights and overall bulk compared to the approved development. While the proposal may remain below the maximum height permitted under the Housing SEPP, it presents as substantially taller and bulkier form in the context of the lower eastern side of Bona Vista Avenue.

Rather than siting the ground level closer to street level to be consistent with the prevailing ground level planes and stepping down with the site's topography, the proposal presents a scale more characteristic of the opposite (higher) side of the street. This results in a built form that is abrupt, disproportionate and visually dominant, disrupting the established rhythm and grain of the streetscape.

- **Amenity and Neighbourhood Impacts**

The increased bulk and scale of the proposal would result in additional adverse impacts on surrounding residential amenity, including:

- A dominating visual presence, particularly when viewed from adjoining properties to the north and from properties on lower ground to the south, exacerbated by the site's constrained dimensions.
- An abrupt and disproportionate change in scale along the street.
- Likely site isolation impacts on the narrow adjoining northern lot, reducing its redevelopment potential and reinforcing the visual imbalance created by the proposal.
- Additional adverse amenity impacts, including overshadowing of neighbouring properties.
- Increased view loss toward the ocean, beach, foreshore and headland for apartments on the opposite side of Bona Vista Avenue.

These impacts are acknowledged by the Design Excellence Advisory Panel (DEAP), which observed that the changes to the basement and ground floor levels:

- Materially alter the development's relationship with the street, resulting in higher front fences and gates,
- Contribute to view loss toward the water, foreshore and headland, and
- Reduce the usability and accessibility of the rear garden, noting the increase in stairs and the presence of a 3.2m-high rear wall enclosing the grassed area.

The DEAP indicated that support for the proposal would only be possible if scale-reducing amendments were made, specifically:

- Retention of the basement and ground floor levels as approved,
- Removal of the additional ground floor bedroom at the front of the building, and
- Reconfiguration of the attic to more closely align with the parent approval.

In the absence of these amendments, the proposal fails to demonstrate compatibility with the desirable elements of the character of the local area as required by Clause 20(3) of the Housing SEPP. The amending DA represents an overdevelopment of the site and is therefore not supported.

View Sharing Assessment

The Land and Environment Court has established a four-step analysis of view loss in *Tenacity v Warringah Council (2004)*. The Commissioner in deciding whether or not view sharing was reasonable adopted the following planning principle.

- i. *Value and quality of the view: The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or Headland) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in*

which interface between land and water is visible is more valued than one in which it is obscured.

ii. *Reasonable expectation of view retention: The second step is to consider from part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side and sitting views is often unrealistic.*

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

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

The concerns raised in submissions in relation to view loss in regards to both the overall size and scale of the development, which has already been approved and the proposed amending DA that increases the view loss further.

The fundamental question is whether the proposed increase in density and height, as allowed under the Housing SEPP, is justified, or whether a reduction in building scale, floor space, and functional amenity for occupants should be required. This assessment should be made in light of potential view loss impacts, the planning principle of tenacity, and the extent to which the proposal complies with—or departs from—relevant planning controls and assessment criteria.

The properties the subject of view sharing assessment are located on the opposite side of Bona Vista Avenue at 30, 32 and 34 Bona Vista Avenue, and the images provided by applicant show the existing approved development (blue caged lines) and a yellow outline of the proposal sought under this amending DA. An assessment of Steps 1 to 3 follows identification of the units and at the end is an assessment Step 4 reasonableness test.

Step 1 to 3 assessment is carried out for the following units

- 30 Bona Vista - Units 1, 2, 3 & 9
- 32 Bona Vista – Unit 2
- 34 Bona Vista – Units 1, 7 and 8

30 Bona Vista - Units 1, 2, 3 & 9

Unit 1/30 Bona Vista:

The following two images show:

- View type: Views from Study, a front corner room in a standing position.
- View impact: The two views show moderate widening and heightened impact to water, sand, and headland views

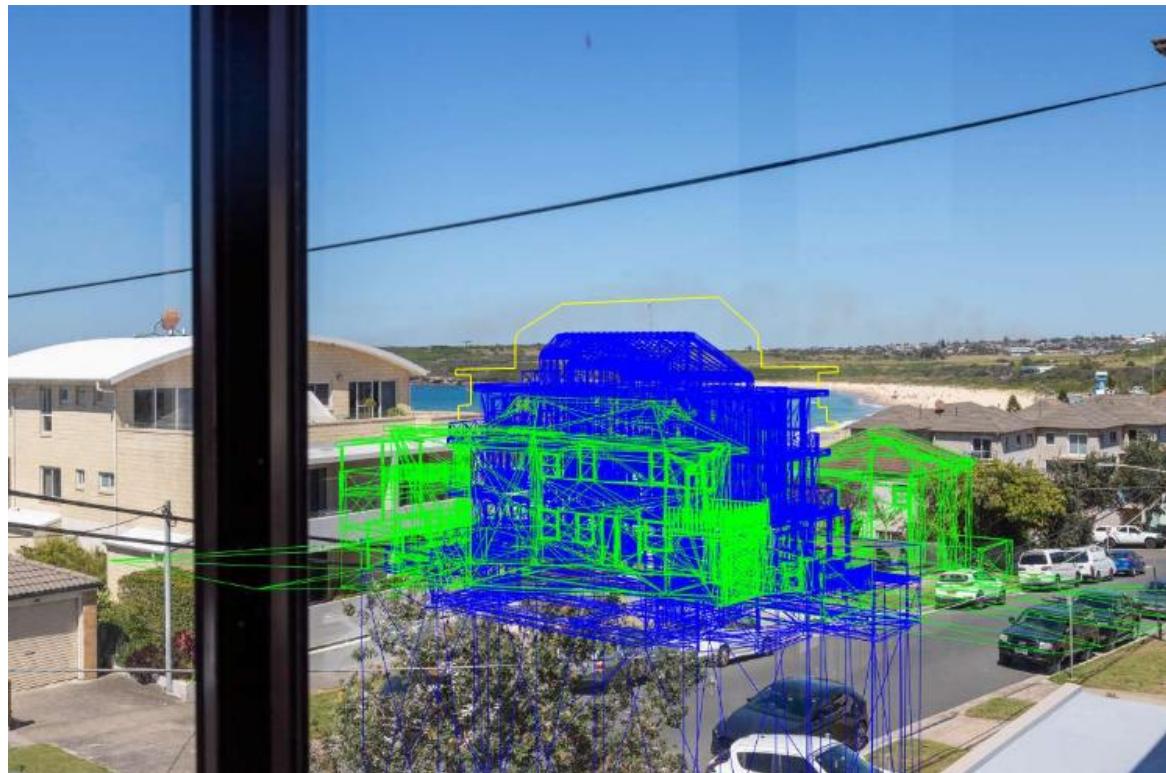


Figure 12: Unit 1 more forward position

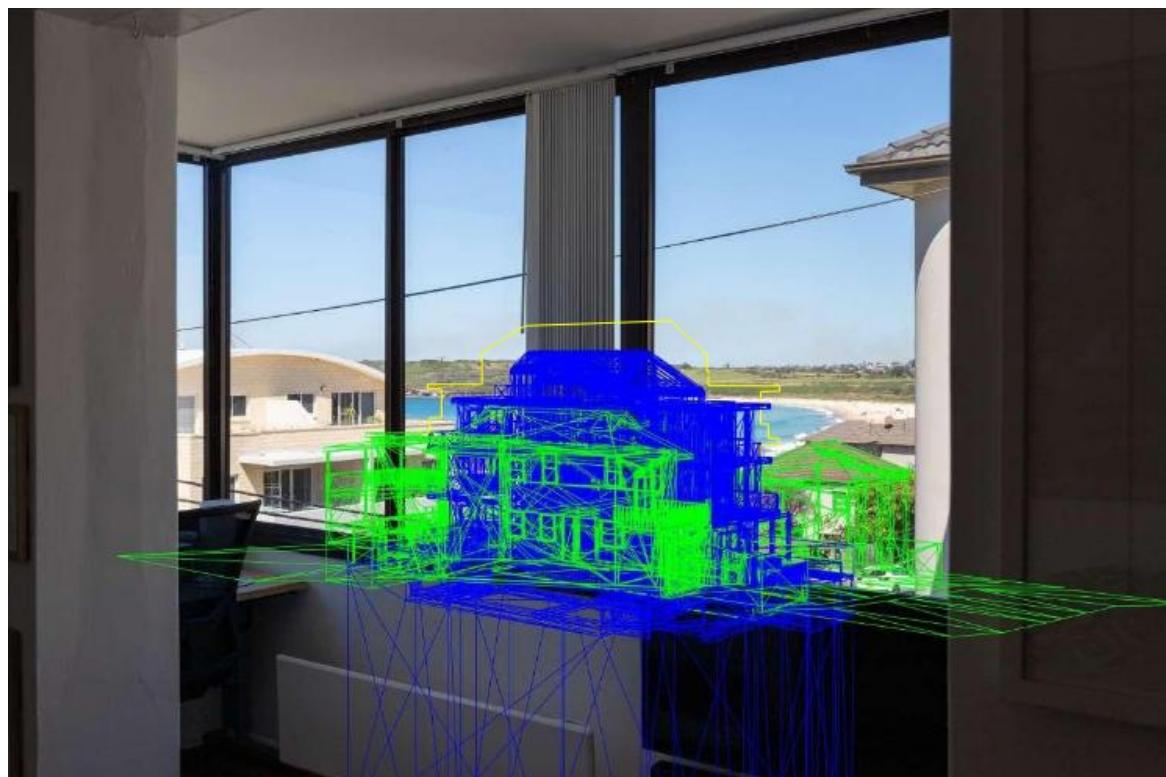


Figure 13: Unit 1 furthe back in the room.

D5/26

Unit 2/30 Bona Vista Avenue:

The following images show:

- View type: Views from a lounge, at front corner and side ways facing, in a standing position.
- View impact: The proposed amending DA will have a moderate widening and heightened impact to water, sand and headland views.



Figure 14: Unit 2: forward lounge room



Figure 15: Unit 2: sideways lounge room.

Unit 3/30 Bona Vista Avenue:

The following images show:

- View type: View from balcony and lounge rooms views in a south easterly directly from corner and side facing windows.
- View impact: The amending DA will have a significant interruption of the expansive view of the horizontal interfacing headland, bay, surf and beach views. No impact to headland view.



Figure 16: Unit 3 Balcony view.



Figure 17: Unit 3 Lounge, south easterly view from corner and side facing.

Unit 9/30 Bona Vista Avenue:

The following images show:

- View type: view from the dining room in standing position from front and sideways direction.
- View impact: The amending DA will have a minor impact to outer water view noting retained views of interfacing water and headland as well as those of the ocean due east.

D5/26



Figure 18: Unit 9 forward facing view from balcony attached to lounge room.

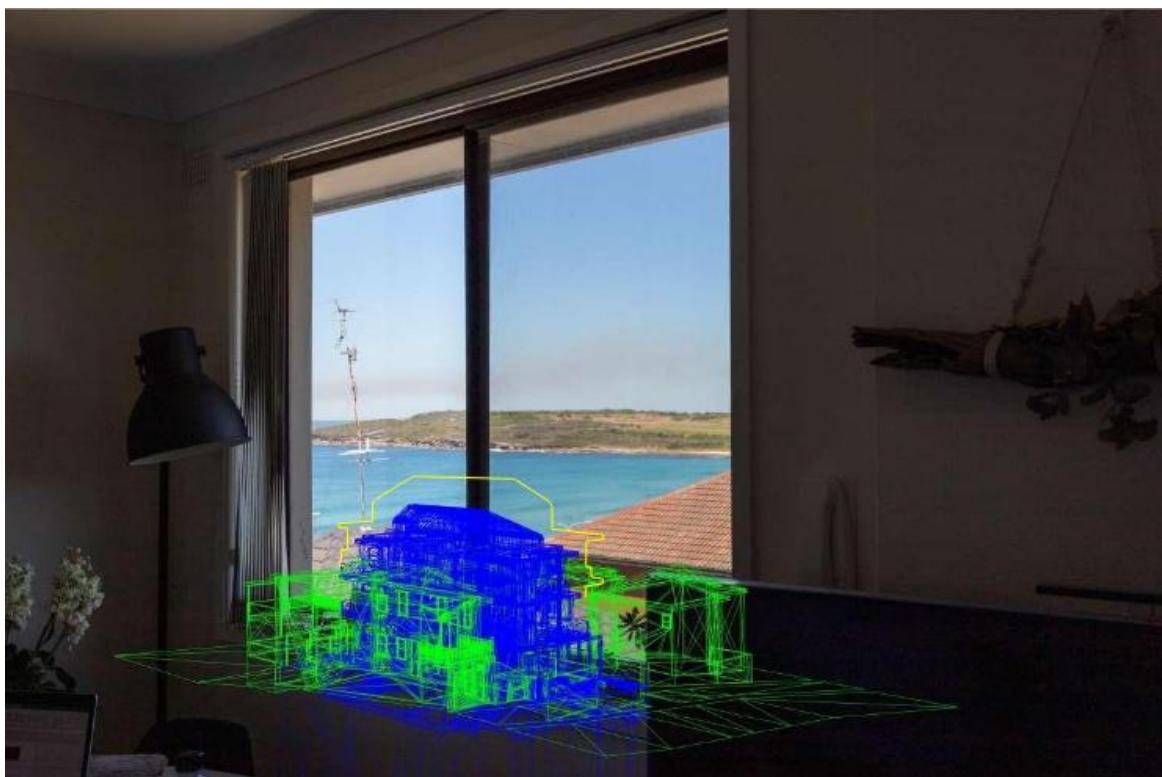


Figure 19: Unit 9 lounge room side facing view.

32 Bona Vista
Unit 1/32 Bona Vista Avenue:

The following images show:

- View type: High quality view from front facing lounge room and sideways facing window
- View impact: The first image shows moderate (the second minor) widening impact of the water and headland view retaining the beach and surf view.



Figure 20: Unit 1: South easerly view from forward window, standing): Moderate widening impact of water and headland view noting views of surf/beach and eastern most headland are retained.



Figure 21: Unit 1: sideways, southerly view from window further back, standing. Minor widening impact of headland, water and views retaining views of surf/beach.

Unit 1/34 Bona Vista Avenue:

The following images show:

- View type and impact: The forward view showing the lower level of this unit compared to the street level and the impact is minor occurring to streetscape and skyline.

D5/26

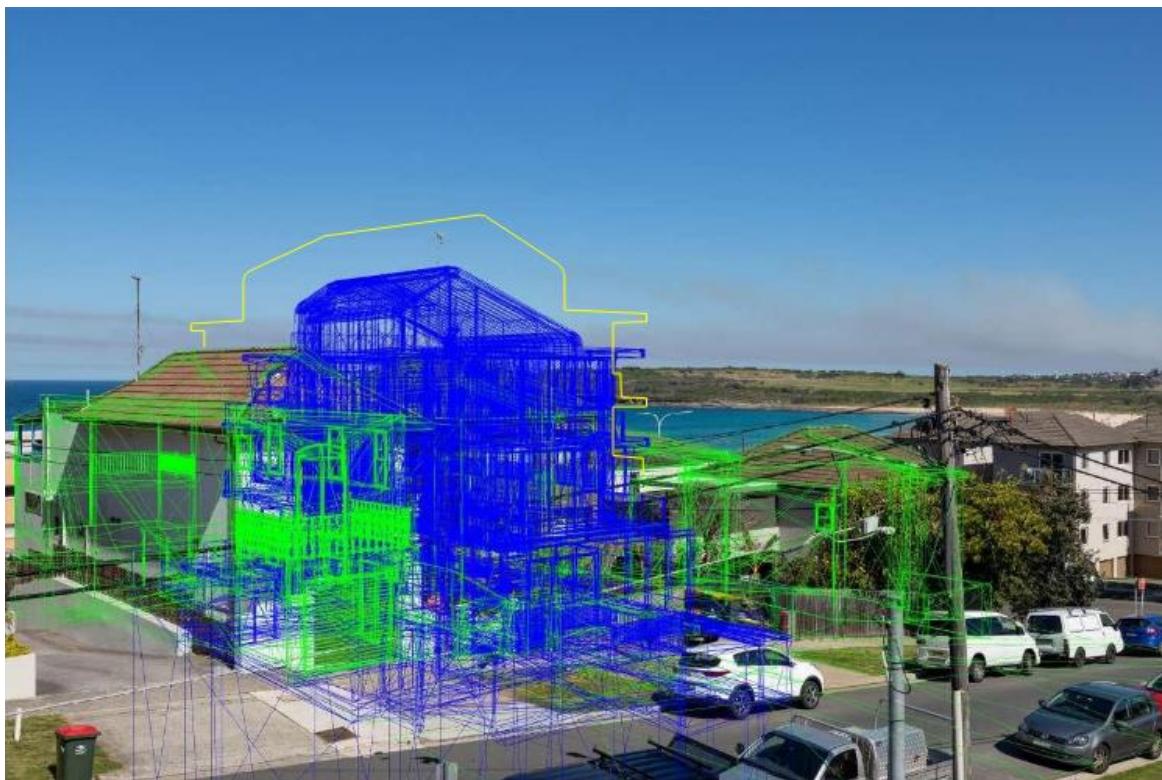


Figure 22: Unit 1 forward view showing impact is to the skyline.

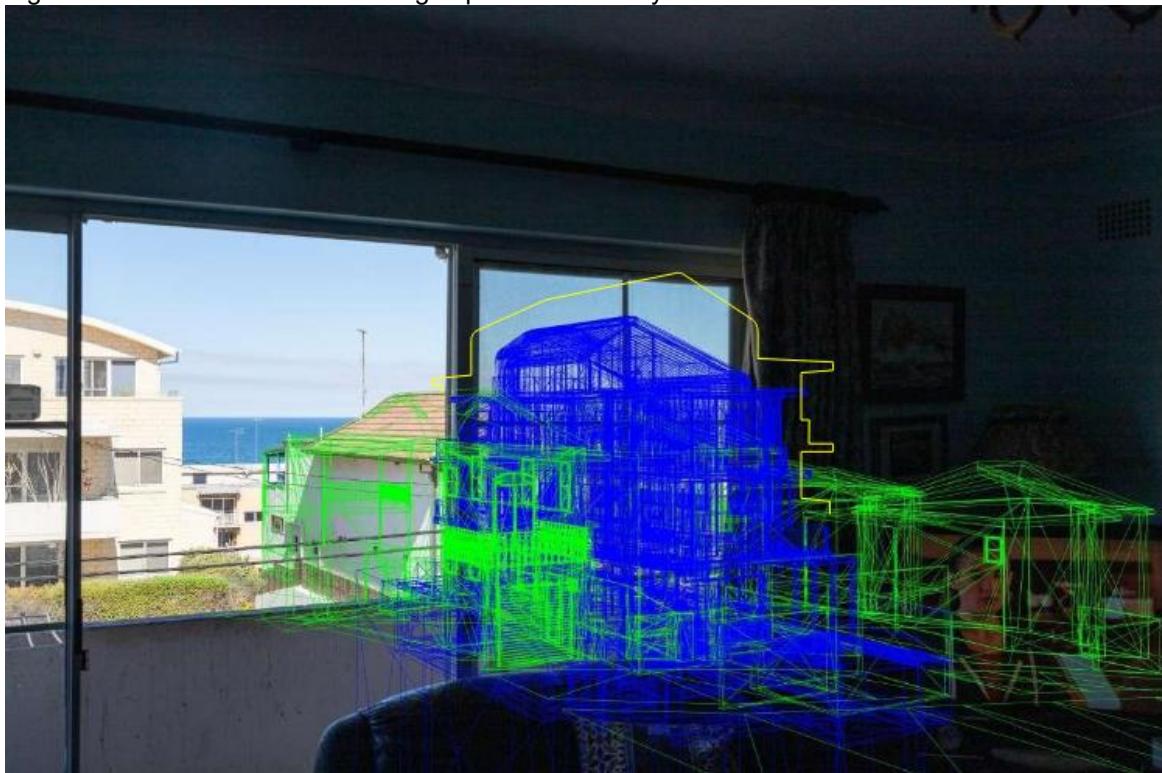


Figure 23: Unit 1 back within the internal living space showing impact is to the streetscape skyline view.

Unit 4/34 Bona Vista Avenue:

The following images show:

- View type: view from unit 4 is from the front balcony and living room behind.
- View impact: The impact is considered moderate to minor as it widens slightly views of the bay and headland retaining bay/surf and beach views.

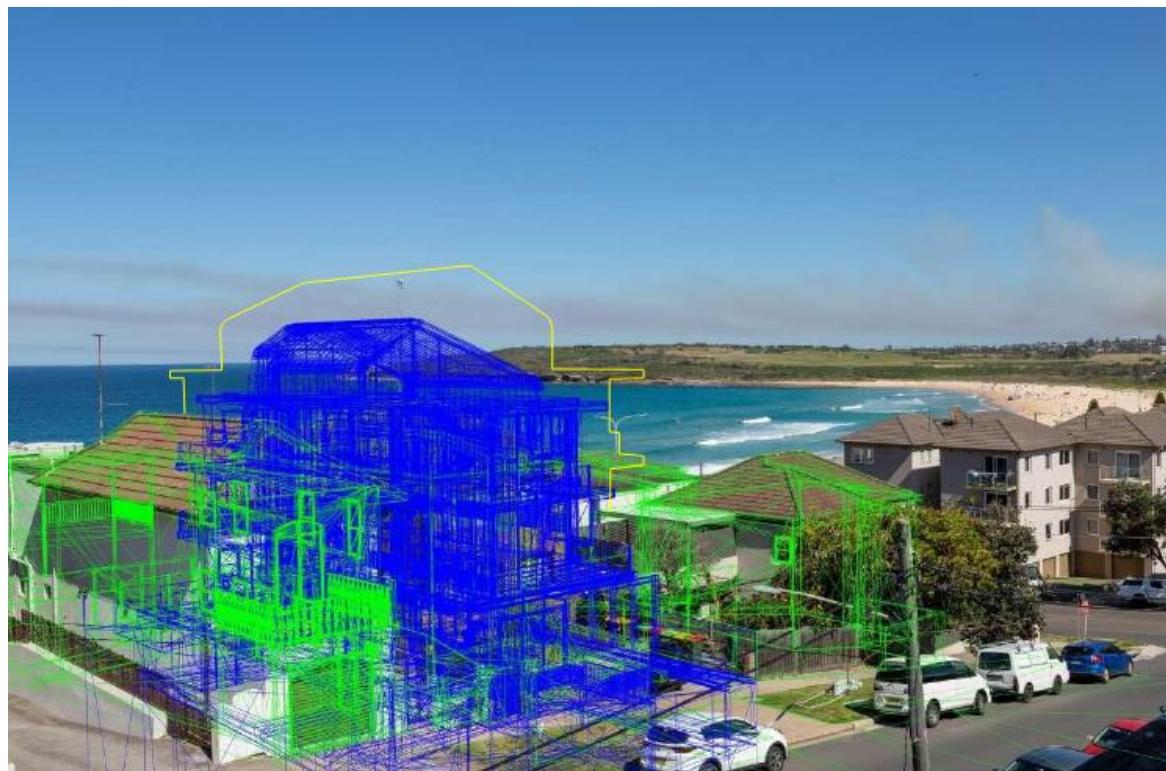


Figure 24: Views from front of Unit 4.

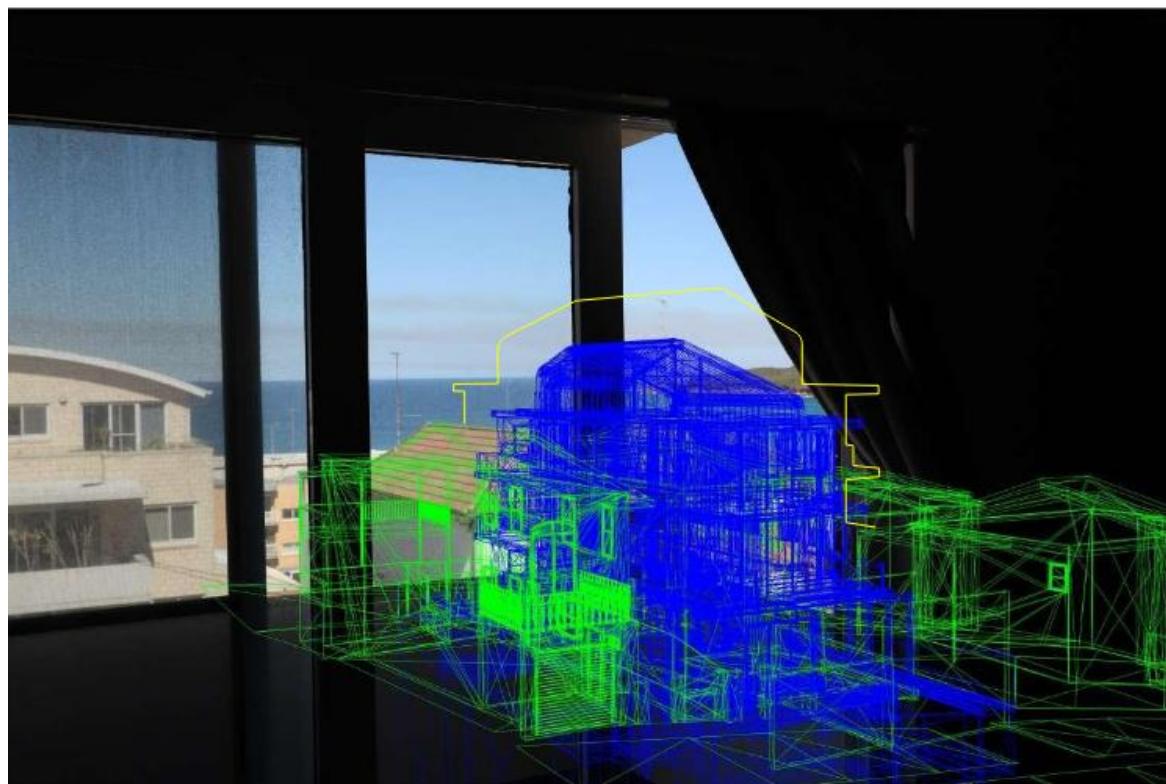


Figure 25: View from living room behind front balcony of unit 4.

Unit 7/34 Bona Vista Avenue:

D5/26

The following images show:

- View type: the views from the forward balcony and living room behind.
- View impact: They show a severe loss of views of the interfacing water and esatern most headland and a widening impact of the bay and ocean views.

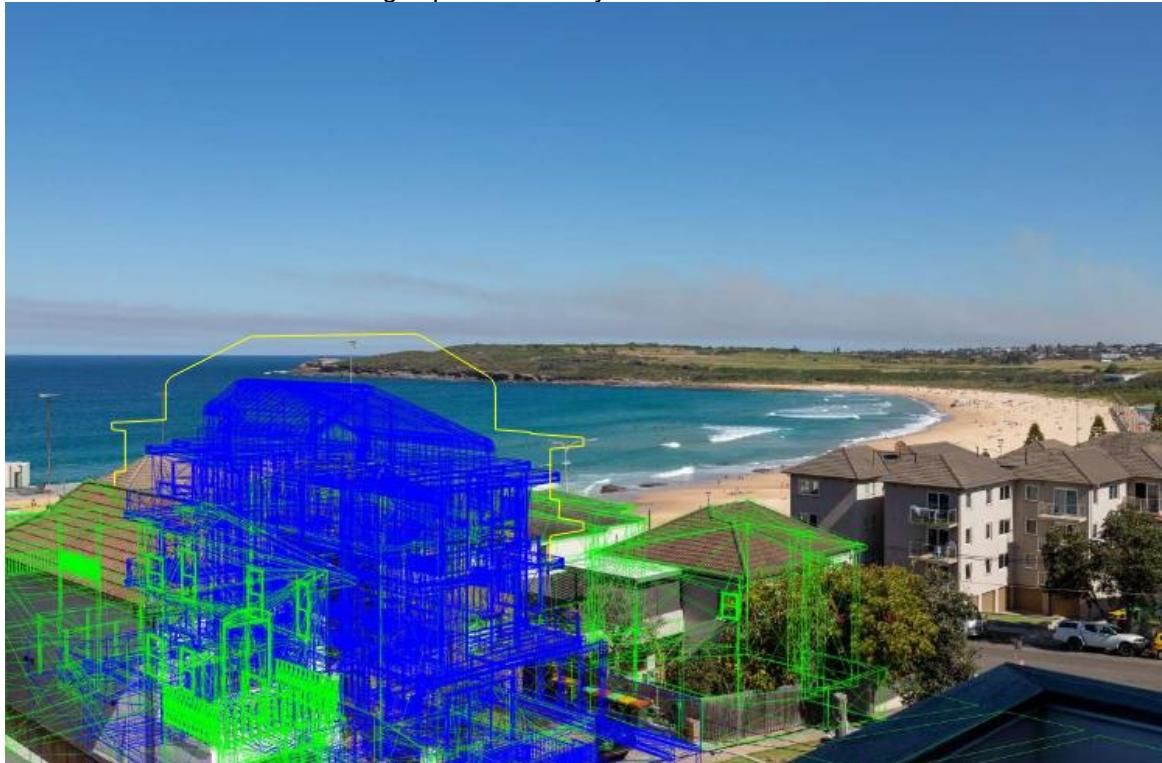


Figure 26: Unit 7 Balcony

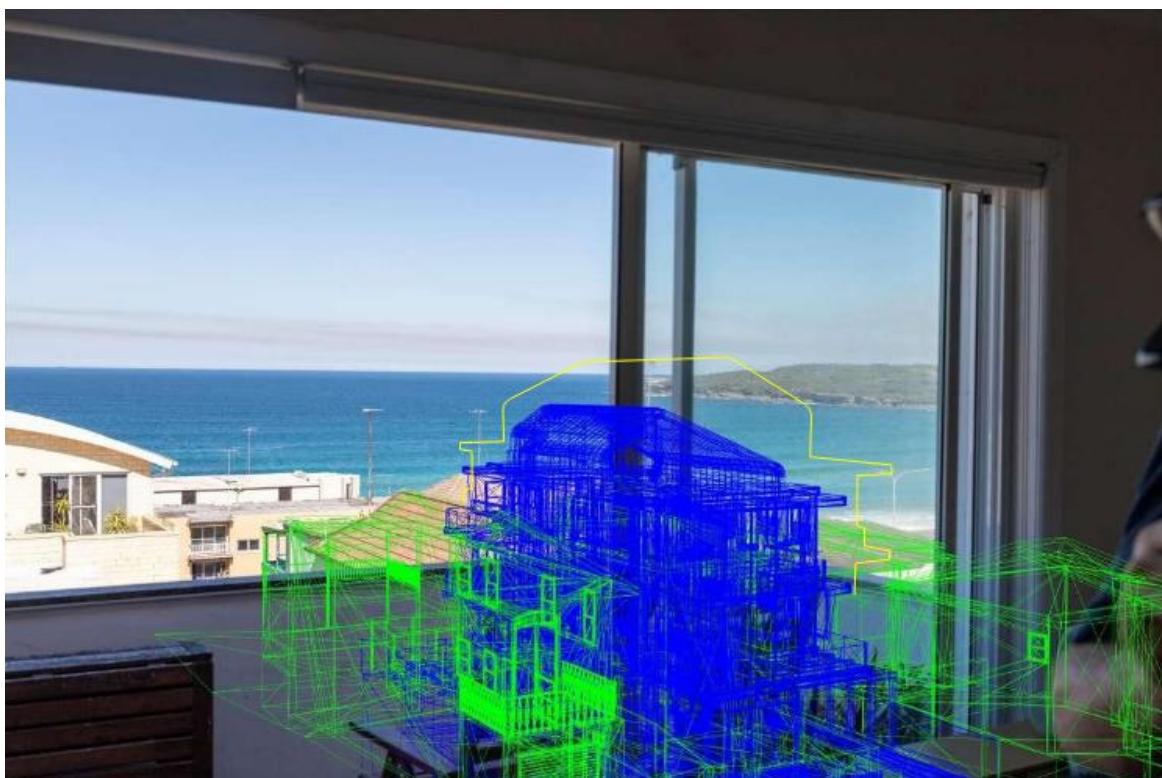


Figure 27: Unit 7 Living room behind.

Unit 8/34 Bona Vista Avenue

The following image shows:

- View type: the view from Unit 8 Living room balcony
- View impact: The proposal will result in interruption further loss of the bay view resulting in partial interruption of the expansive high quality view of the headland, bay, surf and beach. This is similar impact to that of unit 3/30 Bona Vista.

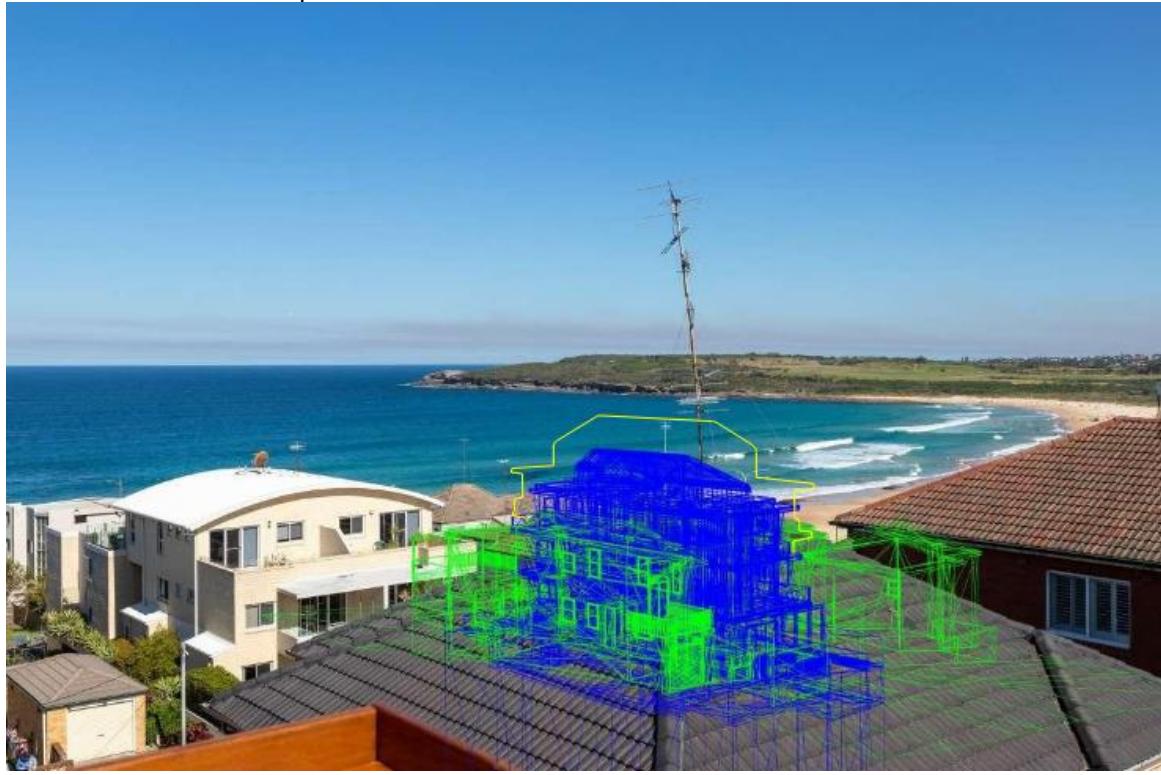


Figure 28: Unit 8 balcony

Step 4: Reasonableness of the Proposal

Step 4 of the Tenacity v Warringah Council planning principle requires consideration of whether the proposal causing the view impact is reasonable, having regard to compliance with planning controls and whether the impacts are unavoidable from a permissible built form.

The applicant submits that identified view impacts range from negligible to moderate and represent a reasonable consequence of development facilitated by the Housing SEPP. While the objectives of the Housing SEPP to increase housing supply are acknowledged, those objectives do not override the requirement for compliance with applicable development standards such as FSR and design requirements under clause 20 of the SEPP.

In this case, the proposal does not represent a compliant or reasonable built form in regard to the following:

- It exceeds the maximum FSR achievable under Clause 16 due to an incorrect GFA calculation and a Clause 4.6 written request, hasn't been provided which is a jurisdictional requirement.
- The site in which the development is sought is undersized in regard to clause 19 of the SEPP.
- The proposed parking relies on a non-compliant and unsupported mechanical car stacker to justify parking numbers; and
- The proposed bulk and scale is incompatible with the character of the local area in regard to Clause 20(3) of the Housing SEPP. Importantly, the Design Excellence Advisory Panel identify that a more restrained and skillful design is available through certain measures.

Under the Tenacity principle, and in this instance, the identified view impacts arise from increased basement ceiling heights, ground floor levels, an expanded attic form, and an overall increase in ridge height of approximately 2 metres beyond the approved development.

The view impacts are therefore not considered an unavoidable consequence of the site's approved development potential, but the result of discretionary design changes that could provide for an AHC component within a reduced built form more in line with the existing which has been the subject of conciliation for the parent DA.

In these circumstances, the proposal will result in moderate to severe view impacts that have a direct relationship to non-compliances, therefore the resulting view loss is unreasonable and not considered to be reasonable under Step 4 of the Tenacity principle.

9. Conclusion

That the application to an amending DA for alterations and additions to an approved residential flat building to provide an additional studio apartment at ground level (increase from 4 to 5 apartments) including an affordable housing component of (2x Studios), the expansion and increased height of the upper level attic to include a new living area, kitchen and bathroom, the addition of car stacker (increase of 4 to 5 spaces), internal reconfigurations and window changes on all levels, revision of balconies and minor roof changes, be refused for the following reasons:

1. Inconsistency with Local Character: The proposal is inconsistent with the existing and desired future character of the locality and fails to respond appropriately to the "spatial characteristics" of the established streetscape. The proposal does not achieve an acceptable contextual fit as required under s. 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act 1979 (EP&A Act), nor does it satisfy Design Quality Principle 1 (Context and Neighbourhood Character) under Schedule 9 of the Housing SEPP.
2. Adverse Amenity Impacts Due to Non-Compliance with ADG Separation controls: The failure to meet the Apartment Design Guide (ADG) separation controls in combination with the shortfall in minimum lot size and inappropriate response to the site conditions results in demonstrable and unreasonable adverse impacts on surrounding properties. These impacts conflict with:
 - RLEP Design quality, as the building's height, mass, and interface conditions do not achieve good integration with the existing and desired future character of the area.
 - Housing SEPP Schedule 9 Design Quality Principles, including:
 - Principle 1 – Context and Neighbourhood Character: The built form does not integrate with the existing streetscape and leads to effective "site isolation" of adjoining site to the north.
 - Principle 2 – Built Form and Scale: does not meet housing SEPP FSR standard, the bulk, massing, and insufficient separation create an overbearing and visually intrusive built form inconsistent with a locality comprised in most instance on the higher side of sites and along this side of Bona Vista, 2–3 storey development.
 - Principle 6 – Amenity: The inadequate separation results in unacceptable visual and acoustic privacy impacts, overshadowing, and a loss of solar access to adjoining and even downstream properties. This contravenes the ADG requirement to give proper consideration of solar access to neighbouring properties. The proposal also results in adverse view impacts.
3. Does not satisfy the Objectives for medium density residential development: The proposal is inconsistent with the objectives of the Randwick Development Control Plan (DCP) – Medium Density Residential Development, which require high-quality design, protection of residential amenity, and appropriate contextual response. The application does not achieve these qualitative outcomes when assessed on merit under s. 4.15(1)(a)(iii) of the EP&A Act.
4. Site Isolation and Lack of Built Form Cohesion: Due to its height, massing, and limited separation, the development fails to integrate with surrounding buildings and disrupts the emerging pattern of recent development along the street. This results in an incoherent streetscape and contributes to the effective isolation of adjoining and neighbouring more recent and anticipated built forms, contrary to the Housing SEPP's and DCP's expectations for cohesive urban form.

5. Not in Public Interest: Given the cumulative impacts—character incompatibility, excessive bulk, inadequate separation, overshadowing, and adverse amenity effects—the proposal is not considered to be in the public interest under s. 4.15(1)(e) of the EP&A Act.

Appendix 1: Referrals

1.1. Design Excellence Advisory Panel (DEAP)

Randwick Design Excellence Advisory Panel



Final Endorsed Comments

DA INFORMATION	
Application Number	DA/997/2025 Amending DA for alterations and additions to a residential flat building
Address	23 Bona Vista Avenue, Maroubra
Meeting Date	1 December 2025
Panel Members	Russell Olsson (chair), Linda Gosling, Lachlan Seegers
Report Date	11 December 2025

INTRODUCTION

This document provides a summary of advice and recommendations arising from the Design Excellence Advisory Panel (DEAP) meeting held in relation to the above application.

The DEAP comments are intended to assist Council in their design consideration of an application, including assessment against Chapter 3 and Chapter 4 of the Housing SEPP and the design principles for residential apartment development (as applicable).

The DEAP is appointed by Randwick City Council as an advisory group, not a decision-making body. The written and verbal comments are the professional opinions of the Panel members and constitute expert design quality advice. The Panel members are suitably qualified persons with expertise in architecture, planning, urban design, heritage, and/or landscape architecture.

To address the DEAP comments, the Applicant may be requested to submit amended plans. Prior to preparing any amended plans, the Applicant must discuss the DEAP comments (and any other matter(s) that may require amendment) with the relevant Council assessing officer. Any amended plans submitted to Council must be accompanied by a written response that details how each of the DEAP comments have been satisfactorily addressed.

PANEL COMMENTS

Introduction

A development approval exists on this site for a development with 4 apartments and 4 basement car spaces in a 3 storey plus attic built form. This design amendment seeks 5 apartments and 5 car spaces with a larger, amended attic form. These changes are sought under the Housing SEPP – Affordable Housing legislation.

1. Context and Neighbourhood Character

The context is an area containing predominantly 3 storey apartment buildings in reasonably close proximity to the northern end of Maroubra Beach.

To the north of the site, on the opposite side of Bona Vista Avenue, are a number of 3 storey apartment buildings that currently enjoy views towards Maroubra Beach and the southern headland of the beach.

2. Built Form and Scale

The site ground plane falls down approximately 3m from the northern corner of the site at the street frontage to the southern corner at the rear boundary.

The basement ceiling height has been raised to accommodate one carstacker to accommodate one extra car in this changed application. One extra bedroom has been added at ground floor level to create one additional studio apartment, with a 2 bedroom apartment to replace a 3 bedroom apartment in the original approval. The proposed attic is also wider than the approved attic. The proposed changes in floor area and car parking result in an overall built form with a ridge height that is 2m taller than the ridge height of the existing approval.

The increased height and bulk changes view impacts on the apartment buildings on the opposite side of the street. The increased height and bulk reduces views to the water, foreshore and headland from certain locations, as illustrated in pages 42 to 46 of the SEE by ARP planning. The SEE makes detailed observations with regard to the LEC Planning Principles with regard to view loss. Without going into that level of detail, the Panel observes that there would be view loss towards the water, headland and some beachfront. The Panel is concerned that the overall building height has been increased not only due to the additional attic floor area and form, but also due to the ground floor level being raised to accommodate one additional car in a car stacker and to replace one 3 bedroom apartment with one Studio and one 2 bedroom apartment in the ground floor level. As a result of the additional height of the car stacker and the apartment changes, the rear masonry wall onto the garden is approximately 3.2m high.

The additional 2m overall building height and changed public/private interface at the street level do not complement the neighbourhood character. The proposed building height is a result of additional basement ceiling height, ground floor planning changes and a wide attic space. The basement and ground floor changes result in a taller front gate and fence. The predominant scale of existing apartment buildings is 3 storeys. The proposed form is 3 storeys plus attic, however the proposed changes create an overall built form which is approximately 4 storeys.

It is recommended that the ground floor and basement, including car numbers, remain unchanged from the original approval. This would lower the whole built form to sit more comfortably in the ground plane, and would reduce the view loss towards the beach from neighbouring apartments on the opposite side of the street. It is recommended that all proposed changes on the First Floor and all floors above the First Floor are acceptable. The overall building height should be reduced due to there being no changes to the basement and ground floor levels.

3. Density

The proposed Studio apartment is 38.3 m² and is technically a studio, however the narrow opening between the bedroom and living room would effectively make it an undersized one bedroom apartment. It is recommended that this apartment not be approved and that the ground floor design remain unchanged from the approved design.

4. Sustainability

- a. Solar panels should be provided to the proposed attic roof.
- b. Ceiling fans are recommended for each habitable room to minimise energy use by air conditioning.
- c. Rainwater capture and irrigation for planted areas are recommended.

5. Landscape

The proposed landscaping strategy is appropriate to the proposed design and its context.

6. Amenity

The potential use of the rear garden is reduced by the proposed raising of the ground floor level. The approved stair to the garden has 3 risers and the proposed has 10 risers, reducing ease of access to the garden.

Rear balconies need to have privacy screening to the south, to protect the privacy of No. 454. The sharing of the Car stacker between 2 units is not convenient.

7. Safety

There are no immediately apparent issues of safety.

8. Housing Diversity and Social Interaction

The proposed apartment types are appropriate, notwithstanding the Panel's comments regarding the proposed ground floor apartments.

9. Aesthetics

The proposed street address is more visually dominant in the changed design than in the approved design. The gate to the street is approximately 5m high compared to 3.5m high. The front fence is up to 2.4m above the footpath compared to 1.2m as approved. These changes are a result of changes to the basement and ground floor.

A Materials and Colour Schedule is needed.

10. SUMMARY

The Panel supports this proposal if the recommended changes are made to further improve the proposal as described above.

1.2. Development Engineer

An amending DA has been received for alterations and additions to the approved residential flat building to provide an additional studio apartment at ground level (increase from 4 to 5 apartments) including an affordable housing component of (2x Studios), the expansion and increased height of the upper level attic to include a new living area, kitchen and bathroom, the addition of car stacker (increase of 4 to 5 spaces), internal reconfigurations and window changes on all levels, revision of balconies and minor roof changes (Housing SEPP – Affordable Housing).at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by Archi Spectrum - Revision I dated 24/09/2025;
- Statement of Environmental Effects by ARP dated Set 2025
- Detail & Level Survey by TSS Solutions dated 23/04/2020

General Comments

The application is not supported in its current form due to the issues outlined below;

Parking Comments

Parking required under Housing SEPP = $(2 \times 0.4) + (2 \times 1.0) + (1 \times 1.5)$
= 4.3 spaces

Parking proposed = 5 spaces (complies)

An additional carspace has been achieved by the addition of the proposed carstacker however there are issues with the height clearance (see below)

Carstacker Issues

The floor-to-ceiling height in the basement at the proposed car stacker location is indicated as 3.73 meters. This clearance is relatively limited and may restrict the stacker's compatibility to small and medium-sized vehicles only. For instance, accommodating two high-roof four-wheel-drive vehicles simultaneously would likely be impractical, which presents a concern as it appears the stacker spaces are intended to be allocated to independent units.

The applicant should aim for an absolute minimum head clearance of 3.9m in this instance.

Motorbike & Bicycle Parking

The AHSEPP is silent on requirements for motorbike and bicycle parking so presumably the DCP parking rates apply. Under the DCP the development would not require any motorbike parking but would require a minimum of 3 bicycle spaces.

The approved and current plans do not indicate any provision for bicycle parking so this was previously conditioned however given the proposed amendments in the basement, it would be Development Engineering's preference that this also be incorporated into any redesign now.

Alignment Level Issues

The alignment levels depicted on the submitted plans are not consistent with those issued in the development consent. Although this is a condition that can be repeated in the amending DA it is recommended that they be amended now because the alignment levels issued by Council are generally 140mm lower and will assist in any redesign of the basement to lower the floor level & increase the head clearance for the carstacker.

Waste Management Issues

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 = $5/2 = 2.5 =$ say 3 (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 Food Organic Garden Organic (FOGO) collection service. As some significant landscape areas are also proposed it is recommended that a minimum of 2 x 240L bins also be provided for FOGO.

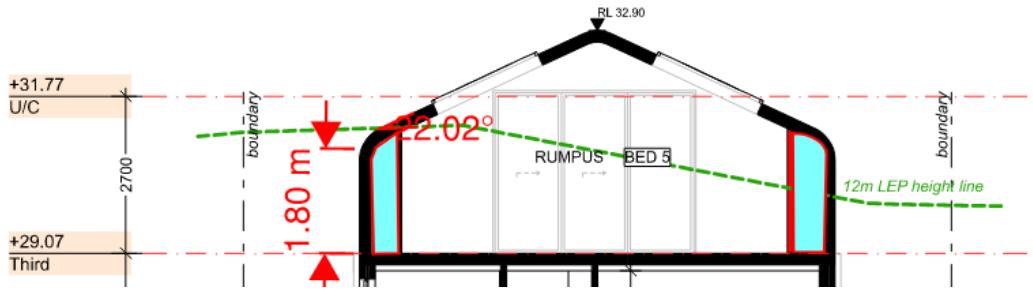
$$\begin{aligned} \text{Total Number of BINS required} &= 3 \text{ (normal)} + 3 \text{ (recycling)} + 2 \text{ (FOGO)} \\ &= \underline{8 \times 240L BINS} \end{aligned}$$

The submitted bins only indicate storage for 6 x 240L bins and so are two short of the required amount. The waste storage area must therefore be redesigned to accommodate the required number of bins

For any enquiries regarding the above matters the applicant is to contact Council's Development Engineer Jason Rider at Jason.Rider@randwick.nsw.gov.au or on 90983-6881.

Appendix 2: Housing SEPP 2021 Compliance Tables

1. Chapter 2 'Infill Affordable Housing' Compliance Table

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
15C Development to which division applies		
(1) This division applies to development that includes residential development if—		
(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and	Residential flat buildings are permitted in the zone, with consent.	Yes, complies
(b) the affordable housing component is at least 10%, and	2x dwellings allocated for AHC.	Yes, complies
(c) all or part of the development is carried out— (i) or development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.	The subject site is in an accessible area.	Yes, complies
(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.	Affordable housing not required in another policy, EPI or planning agreement.	Yes, complies
16 Affordable housing requirements for additional floor space ratio		
(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).	The proposal provides an FSR of 1205:1 see image below.	No – see key issues section of report.
The permissible FSR applying to the land is 0.9:1 plus an additional 30%, provides for an overall permissible FSR of 1.17:1.		
		
Section of the attic. The shaded areas are those floor areas enclosed by 1.4m walls and required to be included as GFA which accounts for around 13.2m ² not included in the applicant's calculation of GFA and therefore FSR.		
(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{2} \text{ (as a percentage)}$	The proposal provides for 17%, with the provision of 2 x studio apartments.	Yes, however it is noted that the proportion of AHC differs on the basis that the applicants

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
		calculated GFA omits areas in the attic between the northern and side walls and the internal attic walls are required to be included in the GFA.
(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).	14.93m	Yes.
(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.	N/A	N/A
19 Non-discretionary development standards—the Act, s 4.15		
(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—		
(a) a minimum site area of 450m ² ,	Proposed = 371.6m ²	No, see key issues section of this report.
(b) a minimum landscaped area that is the lesser of— (i) 35m ² per dwelling, or (ii) 30% of the site area,	Minimum 111.48m ² Proposed = 180m ²	Yes
(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,	As per clause 19(3), not applicable as Chapter 4 applies. See below.	N/A
(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,	As per clause 19(3), not applicable as Chapter 4 applies. See below.	N/A
(e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,	2 x Studio dwellings are to be used for AH. The SEPP requires 0.4 spaces for each say 1 space. One additional space is provided. See	No see Development engineers' comments and summary in key issues section of report.
(f) the following number of parking spaces for dwellings not used for affordable housing—	See development	See Development

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Engineers comments – requires 3.5 spaces. See	engineers' comments and summary in key issues section of report.
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development, Min studio = 35m ² Min 2 bed = 70m ² Min 3 bed = 90m ²	38.3; 40.9 78.7; 79.1. 128.6 +60.4	Yes.
(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	N/A	N/A
(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m ² , (ii) for each dwelling containing 2 bedrooms—90m ² , (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms.	N/A	N/A
(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	As above, (2)(c) and (d) do not apply to deep soil.	Yes.
20 Design requirements		
(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.	N/A	N/A
(2) Subsection (1) does not apply to development to which Chapter 4 applies.	N/A	N/A
(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	Council not satisfied that the proposed development is compatible with the desirable elements of the character of the local area. In addition, the Applicant has failed to demonstrate that if the area is undergoing transition, that the development is compatible with the desired future character of the precinct.	No, see discussion under the EPI section, key issues and DEAP referral sections of this report.

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
21 Must be used for affordable housing for at least 15 years		
(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider.	Details of the registered community housing provider have been provided and are required to be used as such for minimum 15 years as per condition should consent be granted.	Yes
(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.	N/A	N/A
22 Subdivision permitted with consent		
Land on which development has been carried out under this division may be subdivided with development consent.	No land subdivision proposed.	N/A

2. Chapter 4 'Design of Residential Apartment Development' Compliance Table

Standard	Proposal	Compliance
Part 4: Design of residential apartment development		
148 Non-discretionary development standards for residential apartment development		
(2) The following are non-discretionary development standards— (a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,	The proposed development provides sufficient bicycle and motorbike parking specified in Part 3J of the Apartment Design Guide.	Yes
(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 studio and 2- and 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.	Yes

Appendix 3: Apartment Design Guide Compliance Table

Clause	Design Criteria	Proposal	Compliance													
Part 3: Siting the Development																
3D-1	Communal and Public Open Space															
	Communal open space has a minimum area equal to 25% of the site.	No communal space is provided as per original.	No, see Key Issues.													
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	None provided as above.	No.													
<p>Comment: The Apartment Design Guide (ADG) requires studio apartments to be provided with a minimum of 4m² of private open space, directly accessible from the dwelling and capable of being used for outdoor living purposes, that is that it be usable, functional and private.</p> <p>The amending DA proposes the front setback garden area and a wraparound along the northern side pedestrian entry pathway to be used as POS for the new ground level studio replacing the previous 3-bedroom unit which had POS at the rear yard, and which in relation to the original approval was relied upon in accepting the non-provision of communal open space for the development. This amending DA seeks POS at the front setback for the new studio which could be considered to erode at the reasons for supporting the non-provision of communal open space.</p> <p>In other words, the proposal results in a poorer outcome when compared with the approved development, as it provides a relatively exposed area at the front for the studio unit that diminishes the quality and usability of private open space which if ameliorated with physical screening measures could compromise streetscape outcomes.</p> <p>Overall, it is considered that the amending DA worsens compliance with the objectives and design principles of the Apartment Design Guide in terms of POS and communal open space.</p>																
3E-1	Deep Soil Zone															
	Deep soil zones are to meet the following requirements: 3m dimension, 7% site area	The development application includes a deep soil zone of 14%	Yes													
3F-1	Visual Privacy															
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	<table border="1"> <thead> <tr> <th>Building Height</th> <th>Habitable Rooms and Balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should</p>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	The applicant indicates no changes to the setbacks or separation approved in the original. <ul style="list-style-type: none"> (i) Northern side boundary: 1.2m lift, and between 1.5m and 2m for storeys above. (ii) Southern side boundary: 2m in general except for front which is 2.7m. (iii) Eastern rear boundary: 5m to all storeys except for attic which is setback further. 	No, see comment below.
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														

Clause	Design Criteria	Proposal	Compliance
	<p>combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>		
<p>While the ADG allows for reduced separation if justified by urban context, and the DCP also provides flexibility for varying site widths. Whilst portions of the building comply with RDPCP setback controls these are based on development forms substantially smaller than a 4-storey building and do not reflect the narrow site dimensions to the north or the surrounding streetscape context along Bona Vista Avenue.</p> <p>As a result, the amending DA will result in additional visual bulk and overshadowing to neighbouring properties. It also affects view corridors, as discussed in the view sharing assessment. While reduced separation are appropriate in some urban contexts, in this instance the combination of increased height, narrow side boundaries, and limited setbacks results in a built form inconsistent with the desired streetscape character.</p>			
3J-1 Bicycle and Car Parking			
	<p>For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>See parking rate in Housing SEPP</p> <p>See bicycle rate in Part B7 RDPCP.</p>	See above.
Part 4: Designing the Building			
4A Solar and Daylight Access			
	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.</p>	Achieved.	Yes
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	All apartments receive direct sunlight.	Yes
4B Natural Ventilation			
	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p>	All are cross ventilated	Yes
	<p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	>18m for 3-bed unit.	No however considered acceptable

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Clause	Design Criteria	Proposal	Compliance
			noting the narrowness of the site and good amenity provided.
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> • Habitable Rooms – 2.7m • Non-habitable – 2.4m • Attic spaces – 1.8m at edge with min 30 degree ceiling slope • Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired.</p>	<p>Generally, 2.7m to habitable rooms.</p> <p>Attic space is changed to meet the minimum 1.8m height at the southern side and provides a 22-degree pitch replacing the 1.8m wall and 33-degree pitch (northern side). Whilst the 22 degree roof pitch is less than 30 degrees it will not result in head strikes because they have included another internal wall which has a ceiling height of around 2.1m.</p>	Partial compliance.
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio - 35m² • 1 bedroom - 50m² • 2 bedroom - 70m² • 3 bedroom - 90m² 	<p>Min Studio = 38.3m² Min 2 bed = 78.7m² Min 3 bed = 189m²</p>	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).		Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).		Yes
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 		Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.		Yes
4E	Private open space and balconies		

Clause	Design Criteria	Proposal	Compliance															
	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4 m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8 m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10 m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12 m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m	All units have compliant balconies.	Yes.
Dwelling type	Minimum area	Minimum depth																
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m ²	2m																
3+ bedroom	12 m ²	2.4m																
	<p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Apt 2 provided with courtyard. Apt 1 provided with courtyard/garden more than 15m ² .	Yes															
4F	Common Circulation and Spaces																	
	<p>The maximum number of apartments off a circulation core on a single level is eight.</p>	Achieved	Yes															
	<p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	N/A	N/A															
4G	Storage																	
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> • Studio apartments - 4m³ • 1 bedroom apartments - 6m³ • 2 bedroom apartments - 8m³ • 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p>	Achieved	Yes															

Appendix 4: DCP Compliance Table

1.1. Part B3: Ecologically Sustainable Development

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

1.2. Part B4: Landscaping and Biodiversity

Council is satisfied that the amending development application does not materially alter the original approval outcomes for landscaping and biodiversity subject to the relevant conditions of consent being complied with (condition 77 and amendments required in condition 27) in accordance with Part B4 of RDCP 2013.

1.3. Part B5: Preservation of Trees and Vegetation

Council is satisfied that the proposed development meets the tree preservation requirements in accordance with Part B5 of RDCP 2013 noting that the original approval identified no landscaping on site worth or required to be kept.

1.4. Part B6: Recycling and Waste Management

The original consent contained the submission of a waste management plan to be submitted to Council for approval. Should approval be granted for this DA, it will be required to operate in conjunction with the original consent conditions except that there are new requirements for Food and Organic Waste management, although not stipulated in the current waste management plan, these have been adopted by Council in assessing applications for residential flat buildings and the like. Development Engineer has made recommendations for minimum waste requirements for the whole of the development inclusive of FOGO waste to be met by the amending DA.

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

Council is not satisfied that the proposed development meets the parking requirements in accordance with Section 19(2) of the Housing SEPP and Part B7 of RDCP 2013 in so far as the clearance for the car stacker is substandard. Refer to assessment by Council's Development Engineer at the Appendix 1 section of this report.

1.6. Part C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2. Site Planning			
2.2 Landscaped open space and deep soil area			
2.2.1 Landscaped open space	A minimum of 50% of the site area is to be landscaped open space.	48.5% Comply with (30%) requirements under section 19(b) of Housing SEPP	Yes
2.2.2 Deep soil area			
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	21.1%. Comply with 7% required under the ADG.	NA – see comment at left
2.3 Private and communal open space			

DCP Clause	Control	Proposal	Compliance
2.3.1	Private open space		
	<p>Private open space is to be:</p> <ul style="list-style-type: none"> (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas. <p>For residential flat buildings:</p> <ul style="list-style-type: none"> (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m. 	<p>POS adjoins living rooms.</p>	<p>Partial compliance, questionable as to whether sufficient privacy is provided for the front ground level studio unit.</p>
2.3.2	Communal open space		
	<p>Communal open space for residential flat buildings is to be:</p> <ul style="list-style-type: none"> (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. 	<p>No communal open space.</p>	<p>No.</p>
3. Building Envelope			
3.3	Building depth		
	<p>For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.</p>	<p>Building depth of 19m, which was approved in the original. Good amenity is provided by virtue of the multiple aspects for each apartment. For cross ventilation.</p>	<p>Yes, on merit.</p>
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street.</p>	<p>Consistent with approved DA, however not in scale with character of local area. See key issues section</p>	<p>See key issues section of this report.</p>

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DCP Clause	Control	Proposal	Compliance
	<p>(ii) Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(iii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iv) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>of this report relating to character of the local area for further details.</p>	
3.4.2	Side setback		
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 12m to 14m: 2m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>	<p>Side setbacks do not achieve the ADG required separation distances of 6m.</p> <p>Side setbacks whilst maintained as approved, and mostly compliant with the 2m minimum control are not considered sufficient to in so far as they are now associated with a mass and scale that doesn't recognise the intended scale of development in the R3 zone which is generally limited to 12m in height. Moreover, the proposed massing and scale of the development is inconsistent with the established and desired streetscape character along this side of Bona Vista Avenue.</p> <p>Overall, the controls relate to a form smaller than that proposed under the amending DA's sought uplift allowances under the Housing SEPP and are inconsistent with the design requirements under clause 20 of this SEPP.</p>	See key issues section of this report.
3.4.3	Rear setback		

DCP Clause	Control	Proposal	Compliance
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	5m	Yes
4. Building Design			
4.1	Building façade		
	<ul style="list-style-type: none"> (i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs. 	<p>The proposed development has an envelope that is now elevated above street level which is inconsistent with the visual character and proportions along the street. The elevated ground level alongside the narrow lot to the north and lower ground levels to the south will result in an abrupt and disjointed appearance of built form along this side of Bona Vista Avenue.</p>	No, see key issues section of this report.
4.2	Roof design		
	<ul style="list-style-type: none"> (i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be 	<p>The revised attic increases usable floor area and raises the ridge height by about 2 m. Combined with the raised basement and ground floor; the development effectively reads as four storeys, increasing bulk and built form. This conflicts with DCP objectives for streetscape compatibility and ADG objectives for amenity (attic roof pitch) and would worsen impacts on neighbours, including view loss and visual bulk.</p> <p>DEAP comments note that the attic redesign prioritises additional floor space over residential amenity and neighbourhood character, resulting in a poorer planning outcome</p>	No, see comments on the left.

DCP Clause	Control	Proposal	Compliance
	<p>(vi) sympathetic to the overall design of the building and the streetscape.</p> <p>Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p>	<p>than the approved scheme.</p>	
4.4	External wall height and ceiling height		
	<p>(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.</p>	<p>The proposed development raises the second-floor (attic) roof wall heights from the approved levels as follows:</p> <ul style="list-style-type: none"> Front: 8.9–9.97m to 9.96–11.13m Rear: 11.17m to 12.34m <p>The design incorporates a base with a lighter attic roof above, generally consistent with DCP outcomes. However, the increased ground level and raised second-floor walls create a larger solid base and wider attic, adding significant bulk. The overall built form is considered excessive, dominating and detracting from the area's character, which typically features lower ground levels and wall heights that respect maximum controls and site conditions.</p> <p>The proposed wall heights exceed maximum controls and do not appropriately respond to the site's topography or the scale of development along this section of Bona Vista Avenue. With a narrow lot to the north, isolated site conditions, and lower land levels to the</p>	<p>No, see comments at left.</p>

DCP Clause	Control	Proposal	Compliance
		south, the development presents an inordinate scale relative to both existing street elements and the desired future character.	
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	2.7m to habitable rooms.	Yes
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Entrance as approved under DA/637/2020.	Yes
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 		Yes
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.		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	ADG applies	NA

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DCP Clause	Control	Proposal	Compliance
	secondary balconies or terraces in larger apartments.		
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	<p>The amending DA includes an external materials schedule which is generally supported.</p>	Yes
5. Amenity			
5.1	Solar access and overshadowing		
	<p>Solar access for proposed development</p> <p>(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.</p>		
	<p>Solar access for surrounding development</p>		

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> (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. (ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June. (iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further. 	<p>The ADG requires that developments consider solar access to neighbouring properties, aiming to provide at least 2 hours of direct sunlight to principal private open spaces and living areas in mid-winter, though exceptions are allowed where site constraints prevent full compliance</p> <p>Submitted solar diagrams demonstrate that the proposed amending development will result in additional overshadowing of the southern neighbouring properties to the rear. The additional impacts are largely a consequence of the uplift of the development and amended larger bulkier attic design.</p> <p>Given the proposal provides for a substandard attic space that doesn't comply with the attic design controls in the ADG and the proposal is not considered to respond appropriately to the site conditions and the proposal exceeds the maximum FSR permissible under the Housing SEPP it is not considered that the additional overshadowing to the southern neighbours is justified.</p>	No, see comments at left.
5.2	Natural ventilation and energy efficiency		
	<ul style="list-style-type: none"> (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. 		Yes
5.3	Visual privacy		

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	Windows and balconies are generally adequately sited.	No, see Key Issues
5.5	View sharing		
	<ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise 	<p>The development application has been accompanied by a comprehensive view sharing assessment to determine the view impact of the amending proposed development. An assessment is required against clause 5.5 in Part C2 of RDCP and against the planning principle for views under <i>Tenacity Consulting v Warringah Council [2004] NSWLEC 140</i>.</p> <p>The development will result in adverse view impacts.</p>	No, see Key Issues.

DCP Clause	Control	Proposal	Compliance
	<p>(v) obstruction of views from the neighbouring residences and the public domain.</p> <p>(vi) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		
5.6	Safety and security		
	<p>(i) Design buildings and spaces for safe and secure access to and within the development.</p> <p>(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.</p>		Yes
6. Car parking and access			
6.1	Location		
	<p>(v) For residential flat buildings, comply with the following:</p> <p>(a) Car parking must be provided underground in a basement or semi-basement for new development.</p> <p>(b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage.</p> <p>(c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.</p>	<p>Car parking ceiling is raised by virtue of the new studio bedroom at ground level</p>	N/A
6.2	Configuration		
	<p>(iv) Provide basement or semi-basement car parking consistent with the following requirements:</p> <p>(a) Provide natural ventilation.</p> <p>(b) Integrate ventilation grills into the façade composition and landscape design.</p> <p>(c) The external enclosing walls of car park must not protrude above ground level (existing)</p>	<p>The proposed car park exceeds the DCP control of 1.2 m above existing ground, with walls up to 1.84m at the rear and 1.6m at the front. This results in excessive visual bulk and a excessively high gate appearance that is</p>	No, see comments at left.

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DCP Clause	Control	Proposal	Compliance
	<p>by more than 1.2m. This control does not apply to sites affected by potential flooding.</p> <p>(d) Use landscaping to soften or screen any car park enclosing walls.</p> <p>(e) Provide safe and secure access for building users, including direct access to dwellings where possible.</p> <p>(f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as:</p> <ul style="list-style-type: none"> - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain. 	<p>inconsistent with neighbouring developments along this side of Bona Vista Avenue, which generally maintain ground levels closer to the street. The raised car park does not integrate effectively with the façade of the building or landscaping, not considered to meet the DCP objectives of minimising visual impact, preserving streetscape character, and providing an appropriately scaled relationship to the street..</p>	

Appendix 5: Draft DCP – Part C2 Medium Density Residential Development

Status of the Draft DCP

The Draft Part C2 of the Randwick DCP 2025 does not yet have statutory force, however it represents Council's most current and considered position on appropriate built form, amenity and landscape outcomes for medium density residential development. It is therefore a relevant consideration in assessing whether the proposal represents an acceptable planning outcome.

Site Context, Isolation and Lot Constraints

The Draft DCP emphasises site-responsive design that avoids overdevelopment on constrained lots. The proposed scale does not reflect the limitations of either the subject site or the adjoining narrow lot noting that the site has a frontage width of approximately 12.19m and a total site area of 371.6m², which is below the 450m² minimum site area required for in-fill affordable housing under the Housing SEPP. The adjoining site to the north is significantly narrower, with a width of approximately 7.76m. The proposal uplift will result in an intensified built form on a sub-minimum, constrained site, without the spatial capacity to absorb the increased height, bulk and density sought. The combination of increased wall heights with the same setbacks being maintained will now isolate the northern adjoining site, limiting its future redevelopment potential and exacerbating impacts on amenity.

Overall, the amending DA development does not demonstrate an appropriate response to site constraints and results in adverse site isolation outcomes, contrary to the intent of Draft DCP.

Building Form, Scale and Bulk

The draft DCP seeks to ensure medium density development achieves a scale and form that is compatible with surrounding development and reflective of site capacity.

The amending DA increases overall bulk and apparent height through:

- Raised basement and ground floor levels,
- A wider and more dominant attic form, and
- Increased wall heights along the side and rear boundaries.

Although described as 3 storeys plus attic, the proposal presents as a visually dominant built form, inconsistent with the scale anticipated for medium density development on a lot of this size and on this side of Bona Vista Avenue. These outcomes mirror the concerns raised by DEAP, and the original Statement of Facts and Contentions, which were only resolved through a reduction in size and scale.

Overall, it is considered that the proposal conflicts with draft DCP objectives for appropriate scale, transition and built form moderation on constrained sites.

Amenity, Separation and Privacy

The draft DCP expects adequate spatial separation and articulation to minimise amenity impacts on neighbouring properties. The ADG indicates that privacy measures may be employed to meet the privacy needs of both occupants and neighbours. The shortfall in separation, combined with the amending DA seeking increased wall height and maintaining the same setbacks exacerbate impacts on outlook and visual dominance of the built form on the adjoining 7.76m-wide site to the north as well as the adjoining rear yards of properties to the south which are sited below the subject sites land levels.

The proposal does not achieve acceptable amenity or separation outcomes consistent with Draft C2 principles.

Overall, the amending DA does not satisfy the objectives or design guidance of Draft Randwick DCP Part C2 for medium density residential development. In particular:

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- The development intensifies a sub-minimum site that does not meet the Housing SEPP infill affordable housing site area requirements.
- It results in excessive bulk, height and wall scale inconsistent with medium density expectations.
- It creates site isolation impacts for the adjoining narrow northern lot.
- It increases amenity impacts on the neighbouring properties in relation to visual bulk, overshadowing and view loss.

When considered cumulatively, these deficiencies indicate that the proposal represents an overdevelopment of the site and does not reflect the orderly and economic use of land anticipated by Draft DCP. Accordingly, the proposal cannot be supported.

Responsible officer: Louis Coorey, Senior Environmental Planning Officer

File Reference: DA/1029/2025

Development Application Report No. D6/26

Subject: 4 Chester Avenue, Maroubra (DA/482/2025/REV)

Executive Summary

Proposal:	Demolition of existing building/structures, tree removal and construction of 3 x 2 storey attached dwellings, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots.
Ward:	Central Ward
Applicant:	Bryan Long Group
Owner:	Lotus 37 Development Pty Ltd
Cost of works:	\$1,131,054.00
Reason for referral:	<p>The original application was determined by Randwick Local Planning Panel and therefore the Division 8.2 Review must be conducted by the Panel.</p> <p>The development contravenes the development standards for lot size and frontage width in the Housing SEPP 2021 by more than 10%.</p>

Recommendation

- A. That the RLPP's original determination of Development Application No. DA/482/2025 dated 11 September 2025 for demolition of existing building/structures, tree removal and construction of 3 x 2 storey attached dwellings, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots, at No. 4 Chester Avenue, Maroubra NSW 2035, be rescinded.
- B. That the RLPP is satisfied that the applicant's written requests to vary the development standards relating to lot size, frontage width and floor space ratio in Section 172(3)(a), (b) and (d), and Section 173(3)(b) and (d) of *State Environmental Planning Policy (Housing) 2021* have demonstrated that:
 - a. Compliance with the relevant development standard is unreasonable or unnecessary in the circumstances of the case; and
 - b. There are sufficient environmental planning grounds to justify the contravention of the relevant development standard.
- C. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/482/2025/REV for demolition of existing building/structures, tree removal and construction of 3 x 2 storey attached dwellings, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots, at No. 4 Chester Avenue, Maroubra NSW 2035, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/482/2025/REV - 4 Chester Avenue, MAROUBRA NSW 2035 - DEV - Randwick City Council

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1. Executive summary

The original development application was referred to the Randwick Local Planning Panel (RLPP) as the proposed development contravenes the development standards in the Housing SEPP 2021 by more than 10%. The RLPP refused the development application on 11/09/2025 for the following reasons:

- 1) *The proposal is considered an overdevelopment of the site.*
- 2) *The Clause 4.6 statements fail to demonstrate sufficient environmental planning grounds to vary the development standards, where in the circumstances of this case, compliance is reasonable.*
- 3) *The width of the site is too narrow to reasonably accommodate the intensity of the development and results in poor amenity.*
- 4) *The internal layout maximises bedroom numbers to the exclusion of living space resulting in poor internal amenity.*
- 5) *The configurations of the proposed garages / entry are too narrow to function as effective spaces.*

Pursuant to Division 8.2 of the EP&A Act, the application seeks a review of Development Application No. DA/482/2025, which sought consent for demolition of existing building/structures, tree removal and construction of 3 x 2 storey attached dwellings, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots.

The proposal seeks development consent for demolition of existing building/structures, tree removal and construction of 3 x 2 storey attached dwellings, associated ancillary and landscaping works,

and Torrens title subdivision to create three (3) new lots. The proposed consists of a dwelling to each new allotment with the following dimensions:

- Dwelling 1 (6 Chester Avenue):
 - Site area: 176.31m².
 - Frontage width: 5.165m.
- Dwelling 2 (6A Chester Avenue):
 - Site area: 143.54m².
 - Frontage width: 4.205m.
- Dwelling 3 (6B Chester Avenue):
 - Site area: 176.31m².
 - Frontage width: 5.165m.

The key issues associated with the proposal relate to variations being sought to three (3) non-discretionary development standards under the 'low and mid rise housing' (LMR) policy in Chapter 6 of the Housing SEPP 2021. These standards relate to lot size, frontage width and the floor space ratio of the development. The variations result in design and amenity issues related to the development, including the front setback area, side setbacks and the amenity of Dwelling 2 (as detailed in the Key Issues section of this report).

Overall, Council is satisfied that the proposed development, including variations to the LMR development standards, are satisfactory on merit subject to conditions for the reasons outlined in detail in this report.

2. Site Description and Locality

The site is identified as Lot 3 DP 27606, No. 4 Chester Avenue, Maroubra NSW 2035. The site is located on the western side of Chester Avenue between Fitzgerald Avenue to the north and Astoria Circuit to the south.

The site is a rectangular shaped allotment with a 14.535m frontage to Chester Avenue, a 34.135m northern and southern side boundary, and a total site area of 496.2m² (refer Figure 1). The site is relatively flat but exhibits a crossfall from north to south by approximately 600mm.

Existing on site is a two storey dwelling house (refer Figure 2). There are significant trees and shrubs that are the subject of removal, in particular a large Jacaranda tree at the rear of the site. There is an existing vehicular access servicing parking on site along the southern side of the site, within close proximity of an Ausgrid power post.

The surrounding area is characterised by residential development, including low and medium density residential buildings. Adjoining the site to the north at 2 Chester Avenue is a two storey multi-dwelling house development consisting of 3 separate domiciles and 161 Fitzgerald Avenue is a two storey dwelling house, to the south at 6-6B Chester Avenue is a two storey attached dwelling development consisting of 3 separate domiciles (refer Figure 3), and to the west at the rear of the site at 2 Astoria Circuit is a two storey, semi-detached dwelling. The site is opposite 3-3C Chester Avenue (refer Figure 4), which is three storey attached dwelling development consisting of 4 separate domiciles.

The site is located within close proximity to Coral Sea Park and is located within the outer area of the LMR, in accordance with the Housing SEPP 2021. The site is not listed as a Heritage Item or within a Heritage Conservation Area.

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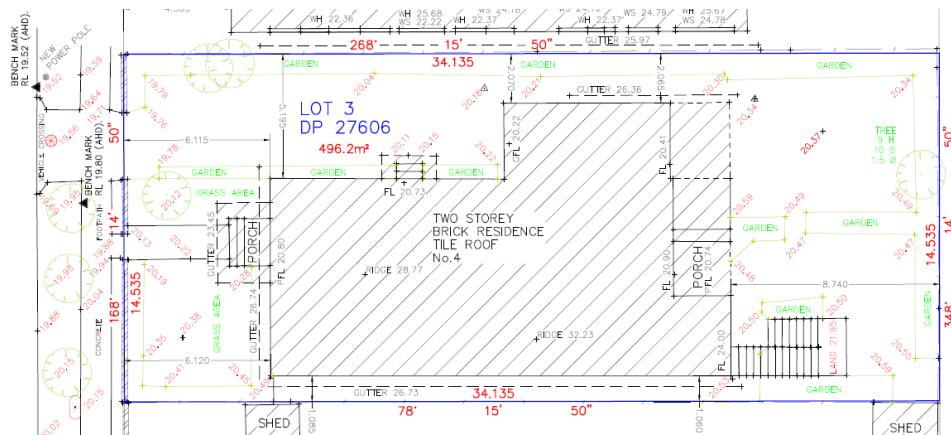


Figure 2: Photo of the subject site (Source: Randwick City Council)



Figure 3: Photo of No. 6-6B Chester Avenue Maroubra (Source: Randwick City Council)



Figure 4: Photo of No. 3-3C Chester Avenue Maroubra (Source: Randwick City Council)

3. Relevant history

The land has been used for residential purposes for an extended period of time.

PL/44/2024

Pre-Lodgement Application No. PL/44/2024 was lodged with Council on 12 December 2024 for the demolition of all existing structures, removal of trees, construction of a new three level attached dwelling complex, comprising three dwellings with associated site, and landscape works, and Torrens title subdivision.

On 11 April 2025, formal advice was provided to the Applicant by Council. The following relevant comments have been reproduced below:

“Landscaped open space and Deep Soil Area

Council advises that in general, the proposal whilst non-compliant with the landscaped open space calculations has the potential to satisfy the objectives of Part C2, Section 2.2.1 of RDCP 2013 if the following pointers are considered in a future DA and SEE:

- *Landscaped areas are effectively distributed on the site to achieve a visual balance between building structures and open space*
- *Larger than minimum areas of private open space for recreational activities.*
- *Increased permeable surface cover, such as to pathways to improves stormwater quality of which the proposal readily achieves this outcome and*
- *Submit a landscape plan with the aim of improving amenity of the private open space and enhances the streetscape character.*

On this basis, the non-compliances with the landscaped open space may be considered acceptable on merit.

Setbacks

In regard to the above objectives, the following advice is provided:

- *The two-storey frontage is generally maintained noting that a future DA shall provide photomontages from additional various vantage points demonstrating this.*
- *The separation between the developments northern and southern side boundaries is 900mm which is generally compliant for a wider site which requires a 900mm side setback for walls up to 7m, however it is important to note that the roof form at the attic level would*

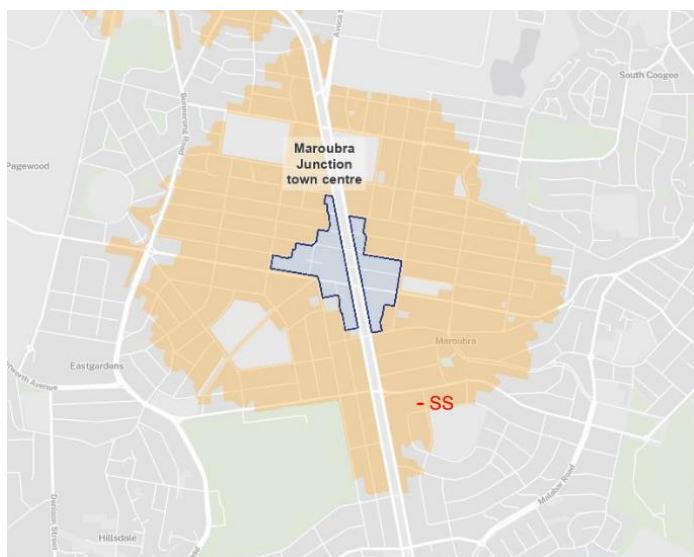
not achieve the side setbacks which calls into question the necessity for the proposed attic level given it does not meet the minimum BCA floor to ceiling height standards for habitability yet contains these vertical roof elements that add visual bulk and potentially cause avoidable overshadowing of the southern neighbours that is above and beyond that caused by a form that did meet the side setback objectives as well as objectives for providing solar access to neighbouring dwellings.

- *The proposal provides for adequate deep soil planting across the site.*
- *The proposal would have to demonstrate that it provides landscaping that meets the objectives under part C2 of the DCP (see comments provided earlier).*

Housing SEPP:

Since the Pre DA was submitted and prior to the advice being issued new standards and controls have been made applicable under the Housing SEPP> Chapter 6 > Division 3.

As the subject site is around 750m walking distance from the Town centre map (shown below), the proposed development for attached dwellings (multi dwelling housing – terraces) is subject to the provisions under the Housing SEPP> Chapter 6 > Division 3:



The following key non-discretionary development standards apply to the proposed development for attached dwellings (terraces):

Clause 172(3):

- Minimum lot size: 500m²: The site measures only 496.2m² and doesn't comply.*
- Minimum lot width 18m: The site has a 14.5m lot width and doesn't comply.*
- Maximum FSR 0.7:1: The proposed has an FSR that exceeds the maximum.*
- Maximum building height: 9.5m: The proposal complies.*

Clause 173(3):

- Each Lot 6m minimum width: The proposal does not comply.*
- 165m² minimum area: 6m: The bookend lots comply however the middle lot has an area of 140m² and doesn't comply.*

The proposed results in non-compliance with the above non-discretionary development standards and a future DA shall include Clause 4.6 written statements seeking variations for each of the above.

In general, new development standards are difficult to justify on environmental planning grounds, however, it is noted that development sites in the vicinity do contain several examples of attached dwellings exhibiting similar characteristics of non-compliances of various degrees.

The key matters that will be required to be addressed are whether the proposed development will essentially satisfy the R3 zone objectives and the objectives of the standards which are sought to be varied.

In general, Council advises that the smaller variations may be more easily justified as opposed to larger variations such as the non-compliance with the minimum lot size of 500m2 and conversely it will be more difficult to justify larger variations such as those to the 0.7:1 maximum FSR development standard and 165m2 minimum lot size. Therefore, Council recommends that a future DA be compliant with the maximum FSR standard, which may necessitate the removal of the attic space such that it is similar to the scheme approved at No. 6 Chester Avenue and the building design be amended, in particular the side elevations to include stepped in elements.”

Development Application DA/482/2025

The Development Application which this Division 8.2 Review under the Environmental Planning and Assessment Act 1979 (EP&A Act) relates to was lodged on 26/05/2025 and was refused by the Randwick Local Planning Panel on 11/09/2025.

This Development Application was amended throughout the assessment process. The initial proposal sought consent to provide three storey multi-dwelling housing. Below is a reproduction of some relevant initial DA submission plans (refer Figures 5-7).

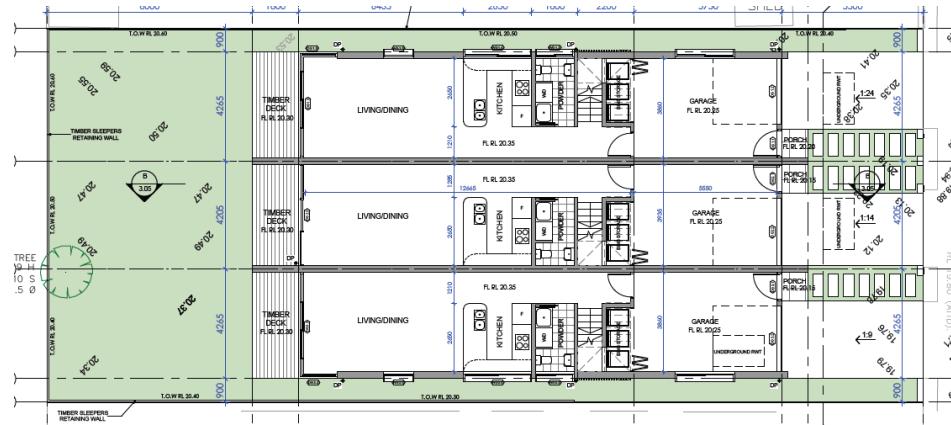


Figure 5: Initially proposed ground floor plan (Source: *Bryan Long Group*)

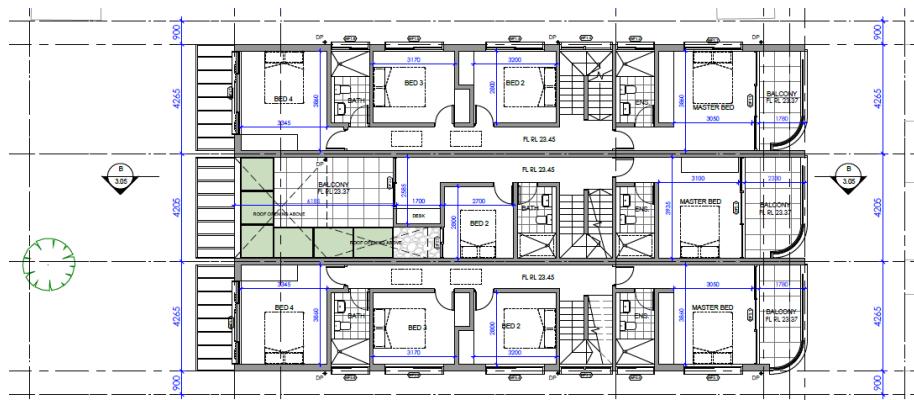


Figure 6: Initially proposed 1st floor plan (Source: *Bryan Long Group*)

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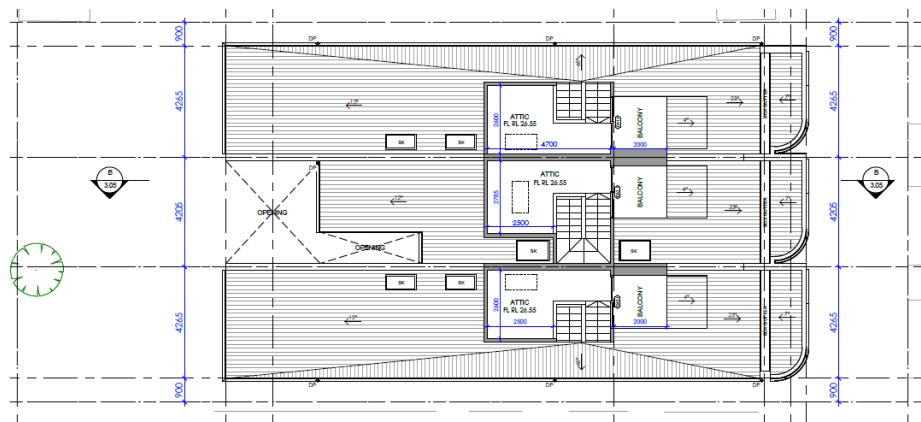


Figure 7: Initially proposed attic floor plan (Source: Bryan Long Group)

Additional information requested by Council during the original assessment process was as follows:

- 12 June 2035, pursuant to section 36 of the *Environmental Planning and Assessment Regulation 2021*, Council issued a formal additional information request to the applicant for an Arborist Report regarding the Jacaranda tree at the rear of the site.
- 19 June 2025, the applicant provided an Arborist Report, which outlined issues with the health and safety of the Jacaranda tree, and recommended consideration of the removal and off-set replanting of the tree.
- 23 June 2025, Council's Design Excellence Advisory Panel (DEAP) met with the applicant to discuss the design merits of the development application.
- 12 June 2035, pursuant to section 36 of the *Environmental Planning and Assessment Regulation 2021*, Council issued a further formal additional information request to the applicant outlining issues with Clause 4.6 Statements, FSR, building height, canopy trees, design and amenity issues, NCC compliance of ground floor rear pergolas, solar access, privacy, earthworks, engineering issues relating to driveway gradients, proximity of the Ausgrid power pole, and the Sydney Water sewer line, and other minor issues.
- 02 August 2025, the applicant lodged a revised survey plan.
- 13 and 14 August 2025, the applicant lodged the amended development application including amended architectural plans, clause 4.6 statements, landscape plan, EDC report, Ausgrid advice, and revised BASIX Certificate.

The amended architectural plans as refused by the RLPP are included below (refer Figures 8-11).

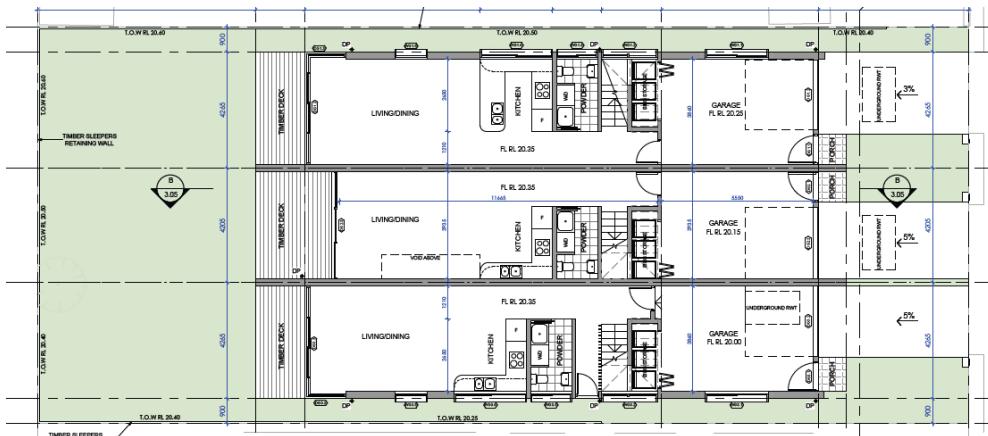


Figure 8: Ground floor plan as refused (Source: Bryan Long Group)

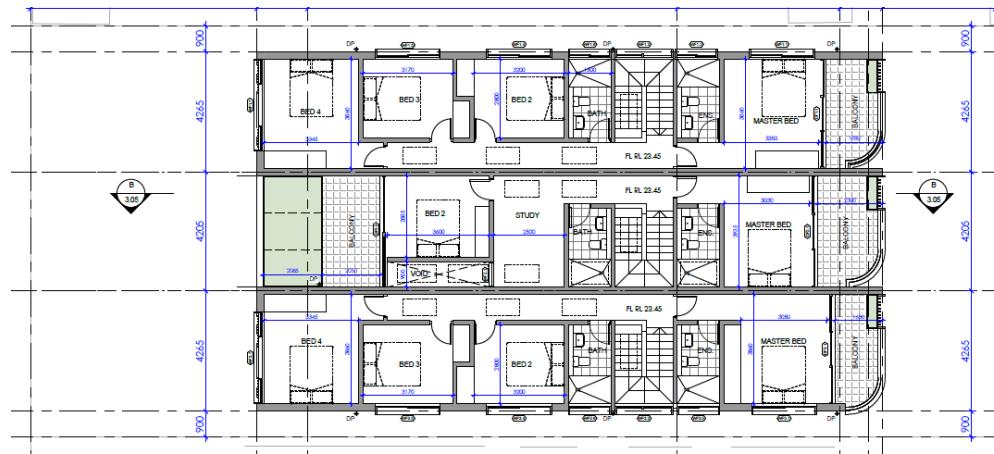


Figure 9: 1st floor plan as refused (Source: Bryan Long Group)



Figure 10: Front elevation to Chester Avenue as refused (Source: Bryan Long Group)



Figure 11: Long section as refused (Source: Bryan Long Group)

The RLPP provided the following reasons for refusal:

- 1) *The proposal is considered an overdevelopment of the site.*
- 2) *The Clause 4.6 statements fail to demonstrate sufficient environmental planning grounds to vary the development standards, where in the circumstances of this case, compliance is reasonable.*
- 3) *The width of the site is too narrow to reasonably accommodate the intensity of the development and results in poor amenity.*
- 4) *The internal layout maximises bedroom numbers to the exclusion of living space resulting in poor internal amenity.*
- 5) *The configurations of the proposed garages / entry are too narrow to function as effective spaces.*

4. Statutory Requirements under Division 8.2

Division 8.2 of the *Environmental Planning and Assessment Act 1979*, as amended, enables an applicant to request a Review of a determination of a development application, or an application for the modification of a development consent.

The consent authority may accept amendments to the original development proposal if the proposed amendments result in substantially the same development as that originally described in the development application. The consent authority may review the determination, and as a consequence of the review, may confirm or change the determination.

Substantially the same development

The Applicant has sought to address the reasons for refusal with the following amendments to the design:

1. Driveway designed with concrete wheel strips only, as per DA conditions and the NSW Pattern Book, to maximise soft landscaping.
2. A traffic report is provided to demonstrate that parking in and out for all three dwellings is achievable and compliant with Australian Standards.
3. A sliding door has been added to separate the garage and pedestrian walkway for improved safety.
4. Entry visibility with glazing on main door has been added to enhance street surveillance.
5. The L01 front façade has been redesigned with a glazed balcony to replace the previous solid fascia for better architectural quality.
6. Sunshade and an angled high ceiling above the balcony allow natural light into the dwelling where possible, consistent with the NSW Pattern Book for triplex developments.
7. A high-level front façade window has been added to create a wind tunnel effect, enabling natural cross-ventilation through the building and improving internal amenity (refer to Figure 21).

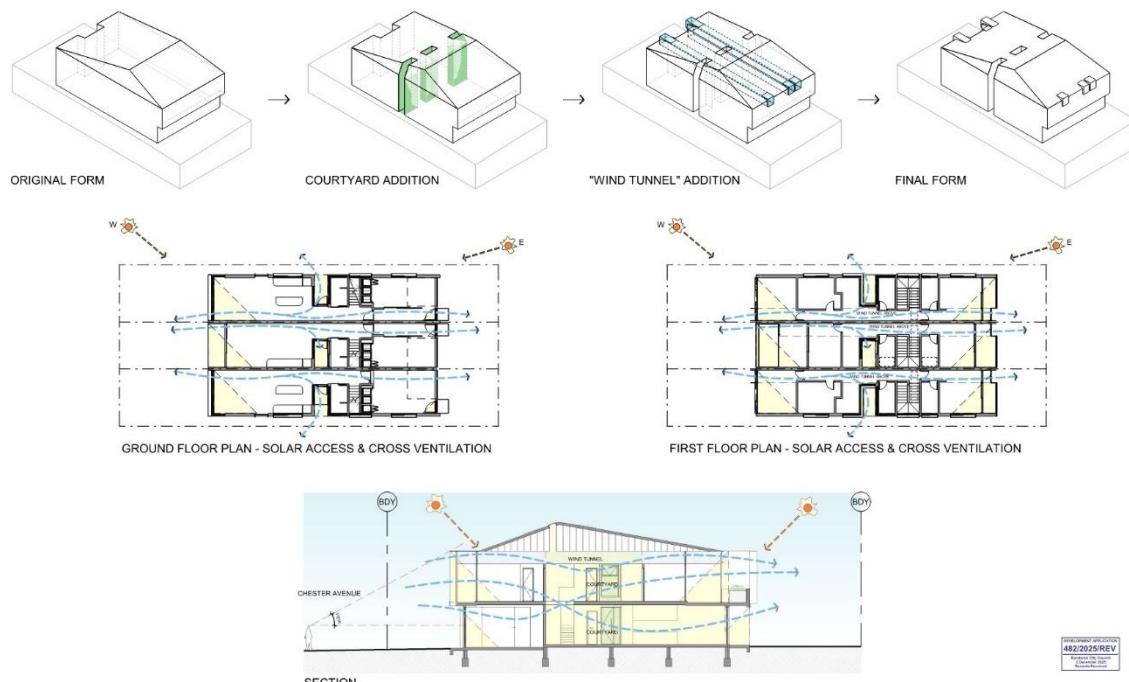


Figure 21: Ventilation diagram (Source: Bryan Long Group)

Note: The Design Excellence Advisory Panel advised this would not be effective.

8. The central courtyard from the pre-DA scheme has been reinstated to enhance

solar access and natural ventilation, in line with the NSW Pattern Book.

- 9. Corner windows have been introduced to the laundry, bathroom (ground floor), and study (Level 1) to optimise natural light.
- 10. A corner door in the living area opens views to the rear garden and improves sunlight access.
- 11. Integration of the kitchen, dining, living areas, and courtyard provides improved amenity, ventilation, daylight, and architectural quality.
- 12. Reduced from 4 Bedrooms to 3 bedrooms + Study (Unit 1 & 3) to improve overall amenity.
- 13. A linear skylight above the staircase allows natural light to penetrate the common corridor on Level 1.
- 14. On L01, the raised ceiling height above the common corridor, combined with high- level front and rear windows, enhances natural ventilation and airflow.

The proposed amendments to the originally approved development are not considered to result in a development that would fundamentally differ from the original proposal, and the proposed development, as amended, results in substantially the same development.

5. Proposal

The proposal seeks development consent for demolition of existing buildings/structures, tree removal and construction of a 2-storey townhouse development comprising three (3) dwellings with attached garages and timber decks, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots and attached dwellings (refer Figures 12-20).



Figure 12: Proposed 3d-render (Source: Bryan Long Group)

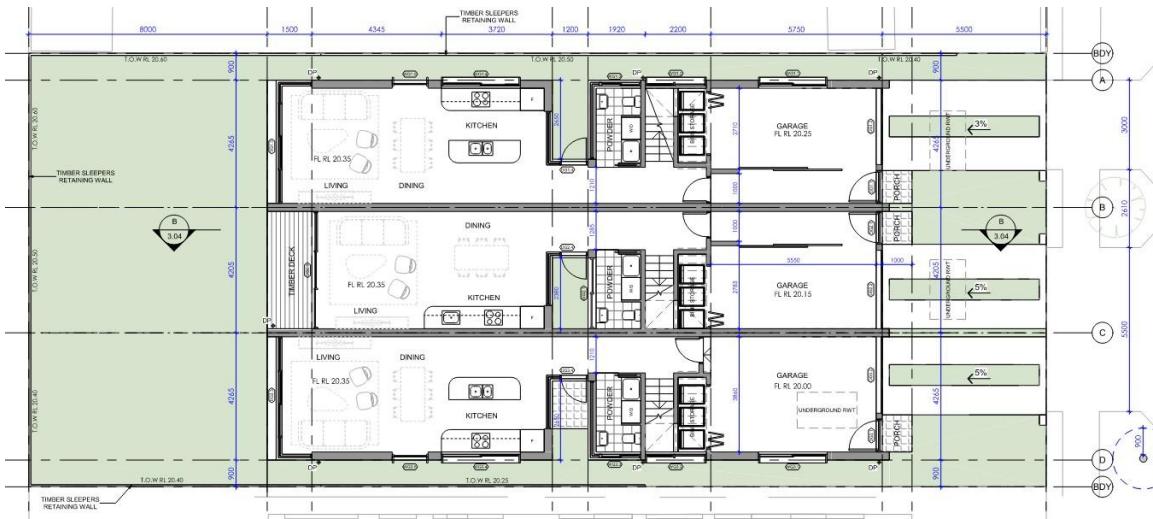


Figure 13: Proposed ground floor plan (Source: Bryan Long Group)

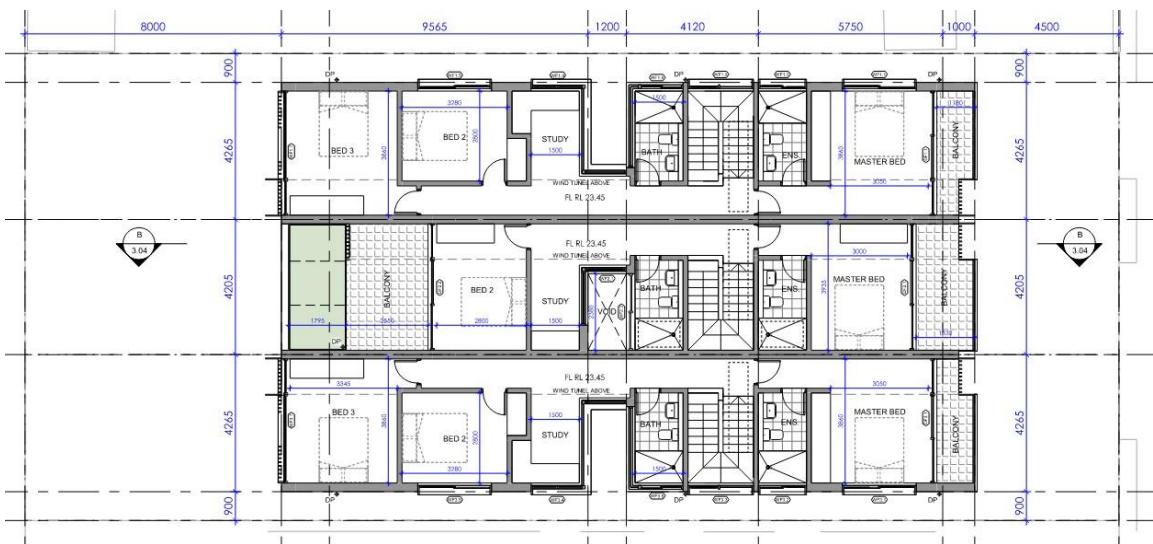


Figure 14: Proposed 1st floor plan (Source: Bryan Long Group)



Figure 15: Proposed 1st floor plan (Source: Bryan Long Group)



Figure 16: Proposed streetscape (east) elevation (Source: Bryan Long Group)



Figure 17: Proposed west elevation (Source: Bryan Long Group)



Figure 18: Proposed south elevation (Source: Bryan Long Group)



6. Notification

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

- 6 & 6A Chester Avenue

Issue	Comment
<u>Site Dimensions and Development Type</u> -Variations to lot width, FSR and lot size under Housing SEPP. The collective non-compliances reflect an attempt to insert a third dwelling on a deficient site.	Council is satisfied the proposed multi-dwelling housing is acceptable. See detailed Clause 4.6 assessment below considering the variations to Housing SEPP non-discretionary development standards.
<u>Character and Bulk</u> -Does not respect planning controls and character of locality -Character impacted by narrow lot width and increased FSR, vertical form amplifies visual bulk. -The development has a 3 storey bulk and scale that exceeds the height of neighbouring dwellings, being 2 storeys. -Adverse visual bulk when viewed from adjoining neighbour private open space.	Council is satisfied that the development is in keeping with recently approved development in Chester Avenue, including at No's 3-3C and 6-6B. The form is a 2 storey development with a pitched roof, which is not incongruent with the streetscape character and considered acceptable in the R3 Zone. In addition, the visual impact of the development on adjoining neighbours is acceptable, being of a similar scale to that at No. 6-6B Chester Avenue.

Issue	Comment
<u>Overshadowing and Solar Access</u> <ul style="list-style-type: none"> -Development will overshadow southern adjoining property at 6 Chester Avenue. -3 storey component and compressed building footprint causes of additional shadows cast. -Development contrary to control for 3hours of direct sunlight to principal private open space between 9am-3pm. 	<p>Additional solar analysis provided by the Applicant demonstrates that the development will not result in adverse solar impacts on the directly southern adjoining neighbour.</p> <p>North-facing living room windows to the ground floor are already overshadowed at mid-winter. The proposed development will not further impact this overshadowing. The POS will maintain sufficient solar access in the afternoon, in accordance with DCP controls.</p>
<u>Privacy</u> <ul style="list-style-type: none"> -Development will result in privacy and noise impacts from rear balcony of dwelling 3. -Development has direct lines of sight into private open space of 6 & 6A Chester Avenue and presumably the other dwellings of 4 Chester Avenue. -Increased potential of noise intrusion and loss of acoustic privacy. -Privacy impacts, development inconsistent with adjoining properties. 	<p>First floor side elevation windows to habitable rooms have sill heights of 1.6m, which will prevent any adverse overlooking impacts. Overlooking from the first floor western rear windows and balcony in that the cross-views to the adjoining neighbours are minor and restricted via privacy louvres to the outer portion of the windows to Dwellings 1 & 3. The privacy of rear adjoining neighbours will not be adversely impacted in that sufficient separation is provided with an 8m rear setback.</p> <p>Any acoustic impacts would be minor in nature and in keeping with general acoustic environment associated with such a development that is permitted in the R3 Zone.</p>
<u>Public Interest and Precedent</u> <ul style="list-style-type: none"> -Integrity of Clause 4.6 variations allow flexibility but not overdevelopment. -Undermine public confidence in planning process allowing variations to numerical controls. 	<p>In this instance, Council is supportive of variations sought to the LMR Housing SEPP development standards relating to lot size and frontage width, for the reasons detailed in the Clause 4.6 Assessment below.</p>

7. Relevant Environment Planning Instruments

7.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 'Vegetation in non-rural areas'

The aims of Chapter 2 are:

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

The proposed development involves the removal of vegetation. Council's Landscape Development Officer reviewed the proposal and confirmed support for the proposed removal and landscaping treatments, subject to the imposition of conditions (refer to Appendix 1 section below). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

7.2. SEPP (Housing) 2021

Chapter 6 'Low and Mid Rise Housing'

Chapter 2, Part 3 of the Housing SEPP relates to development for the purpose of multi dwelling housing or attached dwellings that are within the low and mid rise housing area.

Council notes that whilst the development type of multi-dwelling housing and attached dwellings are permitted in the R3 Zone (pursuant to the RLEP 2012), the provisions of the Housing SEPP are applicable and prevail over the RLEP 2012 (pursuant to clause 1.9).

The proposed development is defined as multi dwelling housing (terraces) in accordance with the SEPP, which has the following definition (in accordance with the Codes SEPP):

multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

In accordance with the Housing SEPP provisions, the proposed development for the purposes of Chapter 6, would be more appropriate defined as 'multi dwelling housing (terraces)' rather than 'multi dwelling housing', as the dwelling are attached and face, and are generally aligned along Chester Avenue.

See Appendix 3 for detailed consideration of the relevant SEPP provisions.

Overall, Council is supportive of the proposed development and the variations sought to the respective development standards. See Section 8 of this report below for a detailed Clause 4.6 assessment.

7.3. SEPP (Resilience and Hazards) 2021

Chapter 4 'Remediation of land'

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

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

7.4. SEPP (Sustainable Buildings) 2022

BASIX Certificate No. 1788680M_04 has been submitted, prepared by Sustainability -Z Pty Limited, dated 12 August 2025, satisfying the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022. The submitted BASIX Certificate includes a BASIX materials index which calculates the embodied emissions and therefore the consent authority can be satisfied the embodied emissions attributable to the development have been quantified.

7.5. SEPP (Transport and Infrastructure) 2021

Chapter 2 'Infrastructure', Division 5 'Electricity transmission or distribution'

Clause 2.48 'Determination of development applications—other development' of the Transport and Infrastructure SEPP requires the consent authority to give written notice to the electricity supply authority and take into consideration any response regarding any development that seeks to penetrate the ground within 2m of an underground electricity power line or an electricity distribution pole.

The proposed development includes works within close proximity to an Ausgrid power post and line to Chester Avenue. As such, the proposal was referred to Ausgrid for comment. Ausgrid consented

to the proposed development, subject to conditions. See below Ausgrid referral in Appendix 1 of this report. As such, Clause 2.48 of the Transport and Infrastructure SEPP has been satisfied.

7.6. Randwick Local Environmental Plan 2012 (RLEP 2012)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the LEP amendment (amendment No. 9) updating the *Randwick Local Environmental Plan 2012*, and the updated LEP commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of updated 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.

The proposed development is defined as 'multi dwelling housing' and once subdivided would be defined as 'attached dwelling'. The definitions of each land use are as follows:

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

attached dwelling means a building containing 3 or more dwellings, where—

- (a) each dwelling is attached to another dwelling by a common wall, and
- (b) each of the dwellings is on its own lot of land, and
- (c) none of the dwellings is located above any part of another dwelling.

Both land uses associated with the proposed development are permissible in the R3 Zone with Council's consent.

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

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.1: Lot Size (Minimum)	In accordance with Lot Size Map.	N/A as site not indicated on any land shown on the Lot Size Map.	N/A
Clause 4.1B: Exceptions to minimum subdivision lot size in Zone R3	325sqm for a dwelling house or for a purpose other than residential accommodation in the Zone R3.	Development is for multi-dwelling housing and attached dwellings (once subdivided).	N/A
Clause 4.3: Height of Building (Maximum)	9.5m	9.04m (proposed ridge RL 29.15 above RL 20.11 from survey)	Yes, complies
Clause 4.4: Floor Space Ratio (Maximum)	0.75:1 Site area = 496.2m ² Max GFA = 372.15m ²	N/A as 0.7:1 FSR development standard in the Housing SEPP prevails (as per clause 1.9 of the RLEP 2012).	N/A

Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in section 8 below.

7.6.1. *Clause 5.21 - Flood planning*

The objective of Clause 6.2(1) is to minimise the flood risk to life and property associated with the use of land; to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change; to avoid adverse or cumulative impacts on flood behaviour and the environment; and to enable the safe occupation and efficient evacuation of people in the event of a flood.

The proposed development within the flood planning area satisfies Clause 5.21(2), in that:

- The identified flooding area is minor, located at the front corner of the site.
- The development is compatible with the flood function and behaviour on the land, with an appropriate FFL of the ground floor and design/location of the driveway access.
- The development will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, as the site only has a minor flood impact to the southern side of the site.
- The development will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, as adequate access has been provided to the building.
- The development incorporates adequate measures to manage risk to life in the event of a flood.
- The development will not adversely affect the riverbanks or watercourses.

Furthermore, Council is satisfied that the proposed development addresses Clause 5.21(3), in that the development will not impact flooding matters in terms of projected changes to flood behaviour as a result of climate change, the intended design and scale of buildings, adequately minimised risk to life and evacuation of occupants, and that the building will not require further building works from potential flooding or coastal erosion.

7.6.2. *Clause 6.2 – Earthworks*

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

The site largely flat and does not include any significant earthworks. Minor retaining walls are proposed to the site boundaries but will not adversely impact upon the amenity or stability of the subject site or adjoining sites. As such, Council is satisfied that the proposed development will not adversely impact the relevant matters state in the objective of the clause.

7.6.3. *Clause 6.4 – Stormwater management*

Clause 6.4 requires the consent authority to be satisfied that the development in residential 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. See Appendix 1 for comments from Council's Development Engineer.

7.6.4. *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 satisfied that the proposed development will provide sufficient essential services, subject to standard conditions.

8. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standards contained within Chapter 6 of the Housing SEPP 2021:

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Section 172(3)(a): Minimum Lot Size	500m ²	496.2m ²	3.8m ²	0.76%
Section 172(3)(b): Minimum Lot Width	18m wide at the front building line.	14.535m	3.465m	19.25%
Section 172(3)(d): Maximum Floor Space Ratio	0.7:1	0.75:1	0.05:1	7.14%
Section 173(3)(b): Minimum Lot Width (Subdivision)	6m wide at the front building line.	Lot 1 = 5.165m Lot 2 = 4.205m Lot 3 = 5.165m	0.835m 1.795m 0.835m	13.92% 29.92% 13.92%
Section 173(3)(d): Minimum Lot Area (Subdivision)	165m ²	Lot 2 = 143.54m ² <i>Note: Lots 1 & 3 are 176.3m² and compliant with the minimum lot size.</i>	21.46m ²	13.01%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.1. Exception to the Minimum Lot Size and Lot Width Development Standard (Sections 172(3)(a)&(b) and 173(3)(b)&(d))

The applicant's written justification for the departure from the Minimum Lot Size and Lot Width development standards is contained in Appendix 2.

Council notes that the applicant seeks to vary four (4) development standards in relation to the site dimensions. For ease of assessment and consideration, Council accepts the premise to consider the lot size and width development standards under a single Clause 4.6 Statement and consideration.

- 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 Minimum Lot Size and Lot Width development standards by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

There are no objectives specifically relating to the minimum lot size standard. As such, the applicant's written justification argues that the principles of the Housing SEPP have been achieved, as per the following:

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Provision of SEPP 2021	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing,	<p><i>The provision of three attached dwellings adds to the diversity of the local housing supply which is important given the zoning of the land and the strategic location of the site within the designated LMR area. Likely that one or more dwellings will end up in the rental market. Owner occupiers of subject development may well be renting at present that will potentially free up rental housing elsewhere. Objective achieved.</i></p>
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	<p><i>Even with compliant development there would be no guarantee that the development of this particular site would provide housing for very low - moderate income households. This objective is targeted to other chapters of the SEPP like retention of affordable housing or those chapters that provide incentives to development of boarding houses and Build to Rent (BTR). Overall objective is not thwarted as significant number of other sites within the locality that could be development for very low to moderate income earners. Site is not large enough nor does it have FSR and density to support BTR development needing 50 units or more.</i></p>
(c) ensuring new housing development provides residents with a reasonable level of amenity,	<p><i>Reasonable amenity provided to each dwelling in the way of solar access, privacy and outlook. Each dwelling has a well-connected POS outdoor area that is easily accessed directly from the internal living spaces at the ground floor.</i></p> <p><i>In terms of amenity the proposal has been designed with all rooms in Unit 1 and 3 having external windows. Unit 1 faces north and will receive ample direct and reflected ambient light and ventilation. Unit 2 is the central unit and has a number of design features added to improve internal amenity with regard to solar access and ventilation. The design of all units now adopts a void that is open to the sky. The front door for 2 of the 3 dwellings is aligned with the rear opening so that air flow can pass through the dwelling. The roof has also been removed over the rear section of dwelling 2 to create a balcony.</i></p> <p><i>We note that as set out in the SEE accompanying the S8.2 the amenity of each dwelling is very much consistent with the amenity provided by a compliant NSW Pattern Book</i></p>

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	<p>design. The void and overall layout and arrangement of the S8.2 scheme (save for the garage and parking for dwelling 2) is consistent with the Pattern Book for east - west orientated lots.</p>
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	<p>Development is ideally located within the defined LMR area under the SEPP 2021 which the State Government has set as being an area that is connected to transport and goods and services.</p>
(e) minimising adverse climate and environmental impacts of new housing development,	<p>The impact of this development with its slab on ground design is consistent with the level of impact anticipated for those uses identified as being permissible in the zone.</p>
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	<p>The overall built form and style of the façade will add vitality to the streetscape. The presentation to the street is overwhelmingly 2 storeys and the roof is contained behind the main façade. The roof gravitates (slopes) away from the front, rear and side boundaries so the perceived visual impact of the roof element is reduced. Wall heights and overall scale is reflective of a 2 storey form. The proposal is compatible with the existing and future form anticipated in the area accepting that infill development does not need to be the same to be compatible (see Project Ventures v Pittwater Council).</p> <p>Of note is the fact that sites within 400-800m of the LMR town centre are entitled to a max FSR of 1.5 where residential flat buildings are permissible with consent as in the subject case. There will be sites in the local area that achieve 500sqm and will propose FSRs up to 1.5:1 under Chapter 6 of the Housing SEPP and may also then apply Chapter 2 for an additional 30%FSR and height. The future character will be informed by Chapter 6 and Chapter 2 of the Housing SEPP and in accordance with decisions like Big Property v Randwick and Pavlakos Capital v Canterbury Bankstown Council the future character will be informed by incentivised housing provisions.</p> <p>In support of the proposed S8.2 scheme is the fact that it provides side setbacks to the first 8.1m of the site which can be a zero setback under the Pattern Book. The additional landscaping enhances the visual amenity of the local area.</p>
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	<p>The objectives more relevant to other sections of the SEPP designed to increase short term accommodation. This particular site in this location is well suited to more permanent accommodation and other areas existing within the defined LMR to provide short term offerings.</p>
(h) mitigating the loss of existing affordable rental housing.	<p>No loss of existing affordable housing.</p>

The applicant's written justification also argues that the objectives of the R3 Medium Density Residential Zone have been achieved, as per the following:

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

The proposal is for the construction of three, new attached dwellings. Each dwelling includes open-plan living and dining, kitchen, laundry, bathroom, and bedrooms (each level) with integrated single garage and parking on the driveway. The site is zoned for the purpose of providing additional housing which is achieved by this proposal. The objective is achieved.

To provide for a variety of housing types within a medium density residential Environment

The proposal increases the variety of housing types and sizes for the local area. It replaces a single brick dwelling and provides for new attached row house style development with improved landscape outcomes. The objective is achieved.

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

The objective is not relevant to the proposal.

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.

The development provides for architecturally designed dwellings that are consistent with the emerging nature of medium density development in the area and the desired future character of the area. The proposal preserves the regular subdivision pattern and orientation of the lots and siting of dwellings along Chester Avenue. The form and style of the attached dwellings is similar to that of the recently approved developments in the immediate area. The proposed development will contribute to the emerging contemporary townhouse style and density of housing in the neighbourhood. The pattern of subdivision is not that dissimilar to a pattern that would evolve from a strictly compliant development. An applicant is able to consider the outcomes of the SEPP 2021 in dealing with future character (see Big Property Pty Ltd v Randwick City Council [2021] (Big Property), HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG). The objective is achieved.

As shown below the immediate locality has been subject to subdivision to narrow lots. The proposal whilst departing from the SEPP 2021 site planning controls will be compatible with the existing and emerging character. There will be future transition to a narrower grain of development. The built form will remain as 2 storeys so that the scale of development does not dominate the openness of the streetscape. When dealing with compatibility of the development (now and in the future) it is acceptable to have regard to the development that will prevail due to the incentivised provisions of SEPP 2021. The area is in transition and will change over time. Only one of the three lots is under the actual minimum lot size.

In accordance with Chapter 6 sites within 400-800m of the LMR town centre are entitled to a max FSR of 1.5 where residential flat buildings are permissible with consent as in the subject case. There will be sites in the local area that achieve 500sqm and will propose FSRs up to 1.5:1 under Chapter 6 of the Housing SEPP and may also then apply Chapter 2 for an additional 30% FSR and height. The future character will be informed by Chapter 6 and Chapter 2 of the Housing SEPP and in accordance with decisions like Big Property v Randwick and Pavlakos Capital v Canterbury Bankstown Council the future character will be informed by incentivised housing provisions.

Overall the proposal will provide an acceptable outcome where the scale and form of the resultant development will be in line with the expected forms foreshadowed within the LMR.

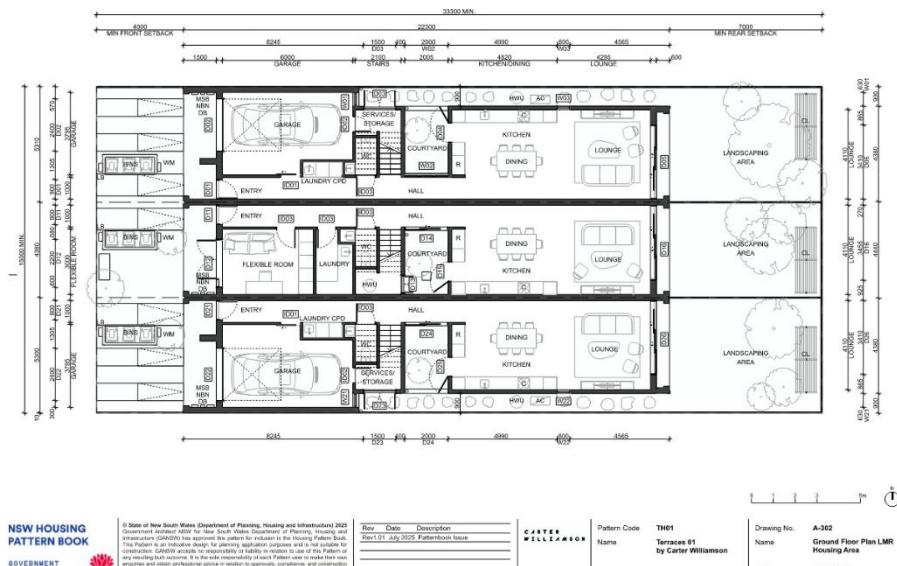
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To protect the amenity of residents

The development has been architecturally designed to address the visual and acoustic privacy of adjoining neighbours via the orientation of windows to the front and rear of the dwellings, screening and separation of outdoor areas, landscaping and beautification of each site.

In terms of amenity the proposal has been designed with all rooms in Unit 1 and 3 having external windows. Unit 1 faces north and will receive ample direct and reflected ambient light and ventilation. Unit 2 is the central unit and has a number of design features added to improve internal amenity with regard to solar access and ventilation. The S8.2 design provides a void to all dwellings to assist with light penetration. The layout of the dwellings is in accordance with the Pattern Book. Below is a comparison between the S8.2 scheme and the Pattern Book:



Pattern book east - west lots



Proposed S8.2A scheme

All rear deck areas face north and will achieve 2.5 hours of solar from 12.30 to 3pm. The size of the dwellings is comparable to 3 and 4 bedroom units in a residential flat building and in this regard 2 hours solar is accepted under the ADG for units. Therefore the solar access to the rear POS and living/dining is seen to be acceptable. It's noted that the ADG permits 15% of the units in all development to face south and those units could potentially have no direct solar access being within the 15% south facing and within the 30% not required to achieve 2 hours. Overall the internal layouts of the dwellings is not convoluted and follows a simple layout so that the best air flow and solar gain is achieved on an east - west layout.

The neighbouring sites are overshadowed to some extent which is a consequence of the east - west orientation and is no greater than what would result from a RLEP compliant height and FSR. The proposed built form does not extend past the rear corner of the neighbouring property. The overshadowing is from a 2 storey development and is no greater than what is typically expected from infill development. The height and the FSR comply with the RLEP. The neighbours are not exposed to any significant additional impacts because of the variations sought under this application.

The objective is achieved.

To encourage housing affordability

Each dwelling is marketed to reflect the local housing market values. The level of fitout of each dwelling will not exceed the expectations of the area, ensuring that the new housing remains affordable and relative to the community profile of the area. The objective is achieved.

To enable small-scale business uses in existing commercial buildings

The objective is not relevant to the proposal.

Assessing officer's comment: In conclusion, the applicant's written request has adequately demonstrated that compliance with the Minimum Lot Size and Lot Width development standard is unreasonable or unnecessary in the circumstances of the case.

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

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the Minimum Lot Size and Lot Width development standards as follows:

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- “Useable living space area is provided for the residents of each dwelling notwithstanding the reduced lot width, lot area and frontage.
- No significant adverse impact by way of privacy, overshadowing, bulk or scale of the development.
- Proposal provides high quality residential accommodation for the occupants and makes best use of the site.
- The proposed development is compatible with the residential character of the area having regard to the surrounding built form and landscape setting.
- Ability to satisfy the zone objectives under the RLEP.
- Design consistent with the NSW Government Pattern Book for east - west orientated sites.
- Enhances the vitality of the Chester Avenue streetscape being compatible with established lot widths in the locality.
- Ability to satisfy the landscaped area objectives under the RDCP.
- The general form of the development has a minimal impact upon the streetscape in terms of siting and the subdivision pattern. There are other recent building and approvals that have occurred where the lot width and size is below the new standards set by Chapter 6 of the Housing SEPP 2021 (see aerial image of lots adjacent and immediately adjoining).
- The building height and parking provisions area are fully compliant with the Housing SEPP controls.
- The resultant built form arising from the subdivision pattern and lot widths is compatible with the surrounding residential character given other multi dwelling housing.
- The pattern of development is compatible and consistent with the desired character of the locality that will be established by the LMR controls which are very similar to the outcomes achieved by this development.
- There are no significant adverse impacts on the surrounding neighbours noting that a CDC dwelling can be built 900mm from the boundary at 2 storeys and with a part basement.
- The development is consistent with the relevant objectives of the R3 Medium Density Residential Zone.
- Development reasonably satisfies the principles under section 3 of SEPP 2021.
- Allows for the orderly and economic use of the land which is consistent with the EP and A Act 1979 objectives.”

Assessing officer's comment:

Council acknowledges with the introduction of the LMR provisions for attached dwellings that compliance with the minimum lot sizes and frontages should be achieved. However, in this instance, Council is satisfied that the lot size and width and subsequent subdivision is consistent with the established character of Chester Avenue.

Council notes that Chester Avenue is a short street that comprises of No. 6-6B Chester Avenue which contains the identical subdivided site areas and frontage widths as the proposed development, being subject to a recent approval under DA Consent No. DA/64/2023. In addition, No. 3-3C Chester Avenue on the opposite side with similar lot dimensions and widths under DA Consent No. DA/63/2022. As such, in this instance, this is the final site on the street to be subdivided with its only frontage to Chester Avenue (i.e. all other sites that have not been subject to a subdivision are corner sites with dual frontages).

In addition, Council notes that under RLEP 2012, there is no minimum lot size or frontage width applicable to the subject site, with the LMR provisions more onerous than Council's requirements.

Whilst the proposed development will result in the loss of off-street parking on Chester Avenue, sufficient parking is available on the nearby streets, including opposite Coral Sea Park.

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

Conclusion

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

8.2. Exception to the Floor Space Ratio Development Standard (Clauses 172(3)(d))

The applicant's written justification for the departure from the Floor Space Ratio 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 Floor Space Ratio development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

There are no objectives specifically relating to the Floor space ratio standard in the Housing SEPP. As such, the applicant's written justification argues that the principles of the Housing SEPP have been achieved, as per the following:

Provision of SEPP 2021	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing,	<p><i>The provision of three attached dwellings adds to the diversity of the local housing supply which is important given the zoning of the land and the strategic location of the site within the designated LMR area. Likely that one or more dwellings will end up in the rental market. Owner occupiers of subject development may well be renting at present that will potentially free up rental housing elsewhere. Objective achieved.</i></p>
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	<p><i>Even with compliant development there would be no guarantee that the development of this particular site would provide housing for very low - moderate income households. This objective is targeted to other chapters of the SEPP like retention of affordable housing or those chapters that provide incentives to development of boarding houses and Build to Rent (BTR). Overall objective is not thwarted as significant number of other sites within the locality that could be development for very low to moderate income earners.</i></p> <p><i>Site is not large enough nor does it have FSR and density to support BTR development needing 50 units or more.</i></p>
(c) ensuring new housing development provides residents with a reasonable level of amenity,	<p><i>Reasonable amenity provided to each dwelling in the way of solar access, privacy and outlook. Each dwelling has a well- connected POS outdoor area that is easily accessed directly from the internal living spaces at the ground floor. The diagrams show how the dwellings are ventilated with ventilated skylights. North and north west facing POS to rear which is private and well connected to the rear yard.</i></p>
(d) promoting the planning and delivery of housing in locations where	<p><i>Development is ideally located within the defined LMR area under the SEPP 2021 which the State</i></p>

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<i>it will make good use of existing and planned infrastructure and services,</i>	<i>Government has set as being an area that is connected to transport and goods and services.</i>
<i>(e) minimising adverse climate and environmental impacts of new housing development,</i>	<i>The impact of this development with its slab on ground design is consistent with the level of impact anticipated for those uses identified as being permissible in the zone.</i>
<i>(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,</i>	<i>The overall built form and style of the façade will add vitality to the streetscape. The presentation to the street is overwhelmingly 2 storeys and the roof is contained behind the main façade. The roof gravitates (slopes) away from the front, rear and side boundaries so the perceived visual impact of the roof element is reduced. Wall heights and overall scale is reflective of a 2 storey form. The proposed bulk and scale at 0.75:1 FSR is compatible with the existing and future form anticipated in the area accepting that infill development does not need to be the same to be compatible (see Project Ventures v Pittwater Council).</i>
<i>(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,</i>	<i>The objectives more relevant to other sections of the SEPP designed to increase short term accommodation. This particular site in this location is well suited to more permanent accommodation and other areas existing within the defined LMR to provide short term offerings.</i>
<i>(h) mitigating the loss of existing affordable rental housing.</i>	<i>No loss of existing affordable housing.</i>

The applicant's written justification also argues that the objectives of the R3 Medium Density Residential Zone have been achieved, as per the following:

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

The proposal is for the construction of three, new attached dwellings. Each dwelling includes open-plan living and dining, kitchen, laundry, bathroom, and bedrooms (each level) with integrated single garage and parking on the driveway. The site is zoned for the purpose of providing additional housing which is achieved by this proposal. Council has provided a 0.75:1 for other land outside the LMR with a R3 zoning. The objective is achieved.

To provide for a variety of housing types within a medium density residential Environment

The proposal increases the variety of housing types and sizes for the local area. It replaces a single brick dwelling and provides for new attached row house style development with improved landscape outcomes. The objective is achieved.

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

The objective is not relevant to the proposal.

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.

The development provides for architecturally designed dwellings that are consistent with the emerging nature of medium density development in the area and the desired future character of the area. The proposal preserves the regular subdivision pattern and orientation of the lots

and siting of dwellings along Chester Avenue. The overall bulk and scale and form of the attached dwellings is similar to that of the recently approved developments in the immediate area. The proposed development will contribute to the emerging contemporary townhouse style and density of housing in the neighbourhood. The pattern of subdivision is not that dissimilar to a pattern that would evolve from a strictly compliant development. An applicant

is able to consider the outcomes of the SEPP 2021 in dealing with future character (see *Big Property Pty Ltd v Randwick City Council [2021] (Big Property)*, *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG)*). The bulk and scale found within the R3 streetscape will increase over time. The height complies with the RLEP and as stated the scale is 2 storeys with pitched roof ensuring the bulk and scale is compatible. The objective is achieved.

As demonstrated in the site planning clause 4.6 variations (see separate document) the immediate locality has been subject to subdivision to narrow lots. The proposal whilst departing from the SEPP 2021 site planning controls is compatible with the existing and emerging character (see separate clause 4.6 variation).

Overall the proposal is compatible with the emerging character with regard to bulk and scale and the form is arranged such that the presentation to the street and neighbours is overwhelmingly 2 storeys.

To protect the amenity of residents

The development has been architecturally designed to address the visual and acoustic privacy of adjoining neighbours via the orientation of windows to the front and rear of the dwellings, screening and separation of outdoor areas, landscaping and beautification of each site.

In terms of amenity the proposal has been designed with all rooms in Unit 1 and 3 having external windows. Unit 1 faces north and will receive ample direct and reflected ambient light and ventilation. Unit 2 is the central unit and has a number of design features added to improve internal amenity with regard to solar access and ventilation. The design of unit 2 adopts a void along with a series of ventilated skylights to provide adequate natural light. The front door is aligned with the rear opening so that air flow can pass through the dwelling. The void at the first floor level has a skylight so that light can penetrate into the dwelling. The roof has also been removed over the rear section of the dwelling. Bedroom 2 then borrows light from across the void to the balcony. Skylights can be ventilated skylights to allow hot air to escape and improve air flow through the dwelling. Diagrams by Bryan Design show the proposed ventilation through skylights.

All rear deck areas face north and will achieve 2.5 hours of solar from 12.30 to 3pm. The size of the dwellings is comparable to 3 and 4 bedroom units in a residential flat building and in this regard 2 hours solar is accepted under the ADG for units. Therefore the solar access to the rear POS and living/dining is seen to be acceptable. It's noted that the ADG permits 15% of the units in all development to face south and those units could potentially have no direct solar access being within the 15% south facing and within the 30% not required to achieve 2 hours. Overall the internal layouts of the dwellings is not convoluted and follows a simple layout so that the best air flow and solar gain is achieved on an east - west layout.

The neighbouring sites are overshadowed to some extent which is a consequence of the east-west orientation and is no greater than what would result from a RLEP compliant height and FSR. The proposed built form does not extend past the rear corner of the neighbouring property. The overshadowing is from a 2 storey development and is no greater than what is typically expected from infill development. The height and the FSR comply with the RLEP. The neighbours are not exposed to any significant additional impacts because of the variations sought under this application.

The number of bedrooms have been reduced for the two 4 bedroom dwellings which are now 3 bedrooms plus a study. The study areas assist with work from home and are genuine study rooms due to the design and floor area limitations. The overall intensity of development has

been reduced under the S8.2 scheme. The extent of living space is now more proportionate to the bedroom numbers. The lounge and dining areas are very similar to the areas promoted by the Pattern Book. The extent of solar achieved by each dwelling for an east-west orientated lot is the same or similar to the solar access achieved by dwellings under the Pattern Book.

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Under the S8.2 scheme two of the three dwellings have access to the internal areas in a direct line from the front door to internal areas. The southern 3 bedroom dwelling provides a side entry as well as a front door however this dwelling requires access around the parked vehicle in the garage. The pattern book only provides an example with 2 of the 3 dwellings having vehicle access. In this case the driveway can only be positioned in the location proposed due to the power pole therefore no option exists to relocate the entry door to the northern wall of the southern most 3 bedroom + study dwelling.

As per the LPP refusal NSW Pattern Book is seen as a usual reference to measure amenity and the overall performance of the design response. The proposal is seen to be consistent with the Pattern Book because:

- The layout essentially mimics the pattern book except for the garage to the southern most dwelling
- Compliant rear setbacks
- Compliant front setbacks
- Compliant side setbacks
- Internal voids to each dwelling to improve solar access
- Use of wheel strips to increase green spaces within the front building setback
- Corner windows and design improvements to assist solar and air flow

Having regard to the above the objective is achieved.

To encourage housing affordability

Each dwelling is will marketed to reflect the local housing market values. The level of fitout of each dwelling will not exceed the expectations of the area, ensuring that the new housing remains affordable and relative to the community profile of the area. The objective is achieved.

To enable small-scale business uses in existing commercial buildings

The objective is not relevant to the proposal.”

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

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

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

- “Useable living space area is provided for the residents of each dwelling notwithstanding the additional FSR of 0.05:1.
- No significant adverse impact by way of privacy, overshadowing, bulk or scale of the development.
- Generally consistent with the NSW Government Pattern Book requirements.
- Proposal provides high quality residential accommodation for the occupants and makes best use of the site.
- The proposed development is compatible with the residential character of the area having regard to the surrounding built form and landscape setting.
- Ability to satisfy the zone objectives under the RLEP 2012 or not offend those objectives.

- *Enhances the vitality of the Chester Avenue streetscape.*
- *Ability to satisfy the landscaped area objectives under the RDCP.*
- *The bulk and scale and form of the development complements the streetscape due to its 2 storey presentation to the street.*
- *Area subject to change to built form due to Chapter 6 of the LMR for flat buildings as well as Chapter 2 incentives for some sites.*
- *The building height and parking provisions area are fully compliant with the Housing SEPP controls.*
- *There are no significant adverse impacts on the surrounding neighbours noting that a CDC dwelling can be built 900mm from the boundary at 2 storeys and with a part basement. Further it is possible to construct a 0.75:1 FSR built form under the RLEP 2012 in the R3 zone.*
- *The development is consistent with the relevant objectives of the R3 Medium Density Residential Zone.*
- *Development reasonably satisfies the principles under section 3 of SEPP 2021.*
- *Allows for the orderly and economic use of the land which is consistent with the EP and A Act 1979 objectives.”*

Assessing officer's comment:

Council acknowledges that the development complies with the RLEP 2012 FSR development standard of 0.75:1, for both the overall development as well as the resultant dwellings to the proposed subdivided sites. Such a scale of development is in keeping with the character of the locality, being similar in scale to the recent approval of No. 6-6B Chester Avenue under DA Consent No. DA/64/2023.

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

Conclusion

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

9. Development control plans and policies

9.1. 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 4.

10. 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.

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Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 4 and the discussion in the Key Issues section of the report below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	<p>The relevant clauses of the Regulations have been satisfied.</p> <p><u>Housing and Productivity Contribution</u> The HPC is applicable for this development type. The case in the NSW Planning Portal has been updated to reflect the applicable monetary contribution.</p> <p><u>Sydney Water Act 1994</u> Pursuant to section 78 of the <i>Sydney Water Act 1994</i>, the proposed development was referred to Sydney Water as a Sydney Water sewer line is located within the site boundaries. Sydney Water concurrence received and supportive of the proposed development, subject to conditions of consent.</p>
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

10.1. Discussion of key issues

Reasons for refusal addressed

The Applicant has amended the design to resolve the reasons for refusal provided by the RLPP on the original application. The Statement of Environmental Effects provided the following explanations that have been reviewed by Council's Assessment Officer.

Lack of separate entry from the garages

The design has been amended and there is an entry provided from the garage to the dwellings for all dwellings. Two of the proposed dwellings have access via the side setbacks (northern and southern dwellings) or via the garage. The central dwelling has its access via the garage. A separate entry door from the garage is provided and direct internal walk way.

Assessing officer comment: The Application has provided an additional side entrance to Unit 1, both side dwellings have entrances via the side facades in addition to the front. A sliding screen wall has been provided to Unit 1 and Unit 2 to create separation from the garage and establish a continuation of the circulation corridor. This reason for refusal has been addressed.

A substandard garage size and door to enable a car parking space to function

Garage openings have been revised and the application is supported by a traffic report confirming the proposed parking and manoeuvring is compliant. Please refer to traffic and parking report prepared by Motion traffic engineers

Assessing officer comment: The traffic report by Morton traffic engineers is included at Appendix 5. This demonstrates that cars can access the garages with swept path diagrams. The minimum garage width provided is 2.66m which is acceptable.

Insufficient living spaces to accommodate 4 bedroom residences

Both of the 4 bedroom units have been reduced to 3 bedrooms. The S8.2 scheme now incorporates 2 x 3 bedrooms and 1 x 2 bedroom. The living spaces are very similar to the Pattern Book and are adequate to service 3 bedroom dwellings of the size and scale proposed.

Assessing officer comment: The reduction of Units 1 and 3 to 3 bedroom units from 4 bedrooms addresses this reason for refusal. The 3 bedroom units have living areas that are 3.9m x 5.4m (refer Figure 22). By comparison the Apartment Design Guide requires living rooms of 3 bedroom apartments to have a minimum width of 4m. The 3.9m falls narrowly short and is compensated for by the 5.4m dimension.

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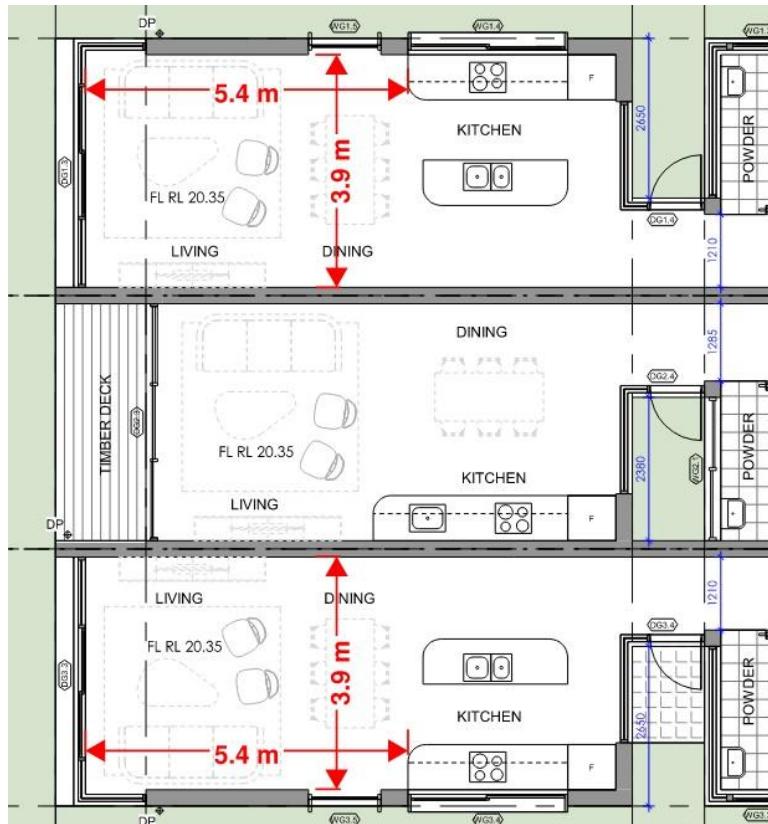


Figure 22: Proposed ground floor plan (Source: Bryan Long Group)
Living room dimensions measured by Council Assessment Officer

The proposal is considered an overdevelopment of the site

The proposal as revised under the S8.2 scheme is not considered to be an overdevelopment of the site particularly when the scheme is compared to the Pattern Book. The proposal provides additional side setbacks when compared to the pattern book for the first 8.1m of the built form.

Overall, the site provides acceptable landscaped area and the extent of hard surfaces has been reduced by use of wheel strips. The proposal complies with the FSR. With the reduction in bedrooms the overall intensity of development will reduce. The rear POS areas are more than adequate to service the 2 x 3 bed dwellings and the single 2 bedroom dwelling. Living areas are now more proportionate to the bedroom numbers. Side setbacks are retained which is a benefit of this scheme over the Pattern Book outcome.

Assessing officer comment: The reduction of Units 1 and 3 from 4 bedrooms to 3 as well as a significant reduction in the study area for Unit 2 has reduced the proposed development of the site. The proposal does not comply with the 0.7:1 FSR as per the Housing SEPP control, a Clause 4.6 was provided – refer above section and Appendix 2. The proposal does comply with the RLEP 2012 FSR control of 0.75:1 and so is not considered by Council to be an overdevelopment of a site in an R3 Medium Density zone. The Applicant provided a comparison with the NSW Pattern Book designs, this is included in the following section of this report below.

The Clause 4.6 statements fail to demonstrate sufficient environmental planning grounds to vary the development standards, where in the circumstances of this case, compliance is reasonable

The relevant clause 4.6 variations have been updated and the reports now include a number of the changes made as part of the S8.2 scheme. The strategic imperative of the State policy is to incentivise housing opportunities in this particular area. The site is ideally located to take advantage of the increased density which is on the lower end of the spectrum in any event. The site planning and intra site amenity issues have been overcome with the S8.2 Review process.

Assessing officer comment: Refer to Clause 4.6 section of this report above and Appendix 2.

The width of the site is too narrow to reasonably accommodate the intensity of the development and results in poor amenity

The site has a width of 14.535m thus the site falls short of the 15m by 465mm. The Pattern Book is based on 15m width but allows zero setbacks to side boundaries. The subject proposal maintains the side setback and achieves pedestrian entry and driveways for each of the dwellings. The reason for refusal aimed at the carparking non-compliance is addressed by the traffic engineers and therefore the reduction of 465mm over the 3 dwellings does not result in poor amenity of the development. Adequate pedestrian and vehicle access, landscaping and solar access is achieved by the S8.2 scheme equal to that provided by the Pattern Book terrace design. The number of bedrooms reduces the intensity of the development and the likely future number of occupants. The central dwelling is only 2 bedrooms + study and limits the intensity of development typically associated with terrace house style development.

Assessing officer comment: The amenity of the proposal has been improved by reducing the number of bedrooms and providing courtyards and an internal light well. The Applicant provided a comparison with the NSW Pattern Book designs, this is included in the following section of this report below. Although the amenity of Unit 2 has been improved, this can be improved further by increase the size of the internal courtyard/light well as per advice provided by the Design Excellence Advisory Panel (DEAP). See Unit 2 Amenity key issue discussion below and DEAP advice at Appendix 1.

The internal layout maximises bedroom numbers to the exclusion of living space resulting in poor internal amenity

The number of bedrooms have been reduced for the two 4 bedroom dwellings which are now 3 bedrooms plus a study. The study areas assist with work from home and are genuine study rooms due to the design and floor area limitations. The overall intensity of development has been reduced under the S8.2 scheme. The extent of living space is now more proportionate to the bedroom numbers. The lounge and dining areas are very similar to the areas promoted by the Pattern Book. The extent of solar achieved by each dwelling for an east-west orientated lot is the same or similar to the solar access achieved by dwellings under the Pattern Book.

Assessing officer comment: As above, the Applicant has reduced the number of bedrooms and added courtyards/light well to increase internal amenity. Although the amenity of Unit 2 has been improved, this can be improved further by increase the size of the internal courtyard/light well as per advice provided by the Design Excellence Advisory Panel (DEAP). See Unit 2 Amenity key issue discussion below and DEAP advice at Appendix 1.

The configurations of the proposed garages/entry are too narrow to function as effective spaces

Two of the three dwellings have access to the internal areas in a direct line from the front door to internal areas. The southern 3 bedroom dwelling provides a side entry as well as a front door however this dwelling requires access around the parked vehicle in the garage. The pattern book only provides an example with 2 of the 3 dwellings having vehicle access. In this case the driveway can only be positioned in the location proposed therefore no option exists to relocate the entry door to the northern wall of the southern most 3 bedroom + study dwelling.

Assessing officer comment: As previously discussed, the Application has provided an additional side entrance to Unit 1, both side dwellings have entrances via the side facades in addition to the front. A sliding screen wall has been provided to Unit 1 and Unit 2 to create separation from the garage and establish a continuation of the circulation corridor. While the front entrance to Unit 3 requires access through the garage, a second side entrance is provided.

The applicant should consider the NSW Pattern Book in any new application

The proposal is seen to be consistent with the Pattern Book because:

- The layout essentially mimics the pattern book except for the garage to the southern most dwelling
- Compliant rear setbacks
- Compliant front setbacks
- Compliant side setbacks
- Internal voids to each dwelling to improve solar access
- Use of wheel strips to increase green spaces within the front building setback

- Corner windows and design improvements to assist solar and air flow

Assessing officer comment: See NSW Pattern Book comparison provided below. Wheel strips have been added to driveways as per recommendation of original Development Application

NSW Pattern Book Comparison

The Applicant provided the following comparison with the NSW Pattern Book schemes within their Statement of Environmental Effects:



Figure 23: Pattern Book ground floor plan

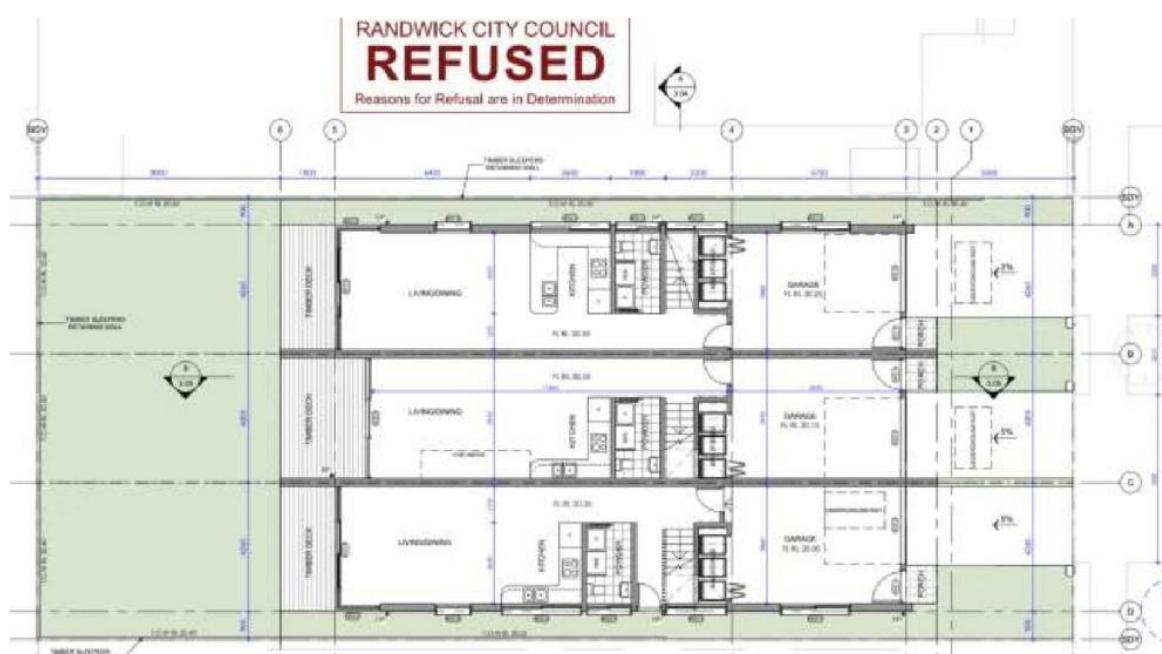


Figure 24: Original DA as refused ground floor plan



Figure 25: Proposed S8.2 ground floor plan



Figure 26: Pattern Book 1st floor plan

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Figure 27: Original DA as refused 1st floor plan



Figure 27: Proposed S8.2 1st floor plan

Unit 2 Amenity

The amenity of unit 2 has been improved from the original Development Application with the proposed internal courtyard providing light and ventilation to the centre of the plan. As per the advice from DEAP, refer Appendix 1, the amenity of this unit can be further improved by increasing the size of this courtyard to be an outdoor 'room'.

A condition of consent has therefore been recommended to increase the width of the courtyard by 1.5m, bringing it to 3m. This would require the deletion of the study nook on the 1st level. The living room can accommodate this increase by shifting 1.5m toward the rear of the site, in line with the living room rear setbacks for Unit 1 and 3. This would not decrease the size of the living room or encroach on the 8m rear setback control (refer Figure 28).

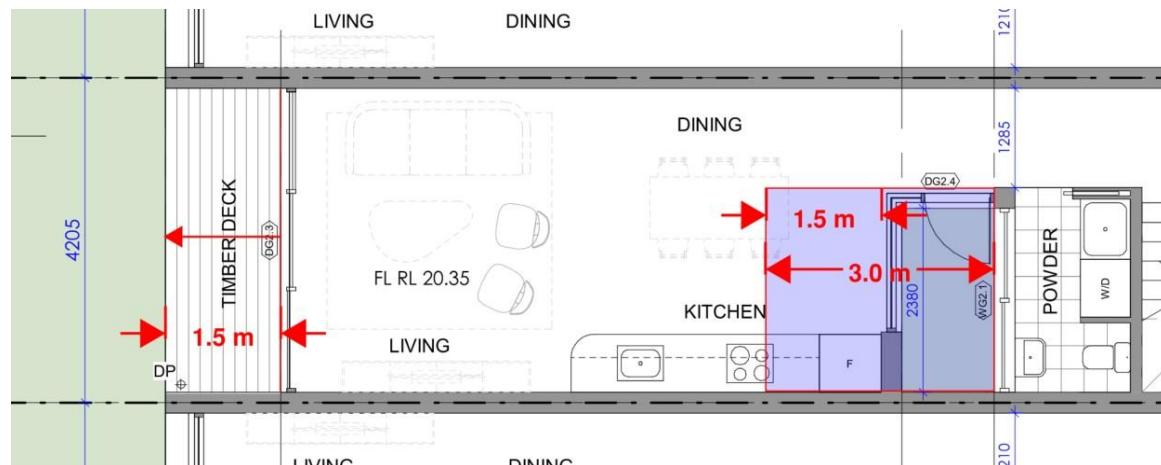


Figure 28: Council Assessment Officer mark up of recommended condition.

The Applicant also proposed a ventilation wind tunnel for all units to address ventilation concerns. DEAP advised that this would not effectively function. Despite this, the additional courtyard incisions to the side setbacks and the courtyard to Unit 2 will improve natural ventilation and overall amenity.

Front Setback Area

Council was concerned that first floor balcony protruded further forward than No. 6-6B Chester Avenue, impacting upon the streetscape character and the alignment relevant to new development along this side of the street. Additionally, the solid nature of the balustrade further emphasized their protruding nature and poor integration with the façade. This has been addressed and resolved in this updated S8.2 review by pulling the balconies back to align with No. 6-6B Chester and using clear balustrades (refer Figures 29-30).



Figure 29: East elevation - DA/482/2025

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Figure 30: East elevation - DA/482/2025/REV

Council remains supportive of providing separate parking to each dwelling via individual driveways and garages. Council was concerned that the front setback area of the building is dominated by hardstand areas. In order to improve the streetscape presentation and amenity of the front setback area, Council recommended that each hardstand parking space/driveway within the front setback area of each dwelling was to be converted into a parking space with concrete wheel strips and gravel or landscaping deep soil zones in between these access strips. This provides the parking spaces required by Council for each dwelling whilst improving the attractiveness of the development to the streetscape and improve stormwater infiltration within the front setback of the site.

DEAP was critical of the landscaping plans, and particularly of the landscaping proposed in the front setback area, refer to Appendix 1. A condition of consent has been recommended that an updated landscape plan be prepared by a suitably qualified landscape architect. This plan is required to adopt the following recommendations of DEAP:

- Adopt a fence treatment in line with DCP controls for lengths of the street frontage not occupied by vehicle crossings; this will create a greater sense of enclosure for the front garden, which does have the possibility of being used as a social space, with the right design treatment.
- Those areas of the front garden not occupied by wheel strips should be as densely planted as possible, with endemic, low water species, to increase amenity, streetscape appearance and local biodiversity.
- The side verges of the development should not be hardscape, but should also be areas of soil and planting – this will increase the amenity, absorption and biodiversity of the site.
- Trees planted in the garden areas in front of the unit entries in addition to shrubs and low planting.

Side Setbacks

Part C2 of RDPC states the following controls:

- Clause 3.4.2 'Side setback':

Attached Dwellings

- i) *Attached dwellings should comply with the minimum side setback requirements for dwelling houses and dual occupancies (attached and detached) (see Section C1 Low Density Residential: 3.3.2 Side Setbacks).*

Notwithstanding the above, side setbacks do not need to comply where they attach to another dwelling within the same development.

In accordance with the side setback controls under Part C1 of the RDCP, the site is subject to a side setback of 1.2m (for portion of building height between 0m-4.5m) and up to 1.75m (for portion of building height up to 6.7m).

The proposed development has a side setback of 900mm to each side boundary. As such, the proposed development does not comply with the numerical controls. The proposed development is considered acceptable by Council, in considering the objectives of the relevant RDCP clauses as detailed below:

- The proposed development will provide a form and massing of development that complements and enhances the streetscape character of Chester Avenue, being comparable in scale and envelope to No. 6-6B Chester Avenue, which has identical site dimensions and a building footprint with 900mm side setbacks. The subject DA No. DA/64/2023 is a recent consent issued by Council under the same Part C2 RDCP.
- The proposed development will provide adequate separation between neighbouring buildings for visual and acoustic privacy and solar access. The variation to the side setback will not impose upon privacy, nor will it adversely impact upon solar access to the southern adjoining neighbour at No. 6 Chester Avenue (as detailed in the DCP Compliance Table in Appendix 4).
- The proposed development complies with private open space and deep soil planting controls of the RDCP.
- The proposed development does not adversely impact on view corridors.
- An increase in 300mm to side boundaries to comply with the side setback controls would impact upon the amenity of Dwellings 1 & 3, impacting upon internal amenity and providing undersized bedrooms.

Design Excellence Advisory Panel

The amended S8.2 proposal was referred to Randwick's Design Excellence Advisory Panel with a meeting held on 22 January 2026 and written advice provided on 27 January 2026, refer to Appendix 2. Points raised are as follows:

1. Context and Neighbourhood Character

- *The site is in a wholly residential area of Maroubra, the Coral Sea Housing Estate.*
- *The subject site is near Coral Sea Park, a major local open space amenity, and close to Anzac Parade, the major thoroughfare and public transit corridor for the area.*
- *The immediate context consists of one and two-storey single family residences, as well as a collection of two and three-storey multi-unit residential buildings, mostly dating from the 1960's, when the suburb was established. Recent development has contributed contemporary residential buildings to this mix, predominantly of the same scale – 2-3 storeys, 3-6 units.*
- *In this context, the proposal is positive, introducing a necessary housing typology to the area.*

Assessing officer comment: It is agreed that the proposed housing typology is in keeping with the context and neighbourhood character. Of particular note are No.6-6B Chester Avenue directly to the south, a two storey attached dwelling development consisting of 3 separate domiciles, and opposite at No.3-3C Chester Avenue which is three storey attached dwelling development consisting of 4 separate domiciles.

2. Built Form and Scale

- *The overall built form, of three individual units, demarcated by entries, balconies and garage doors, is fundamentally acceptable.*
- *The modelling and massing of the front (Chester Avenue) elevation still requires some resolution. The architectural expression and roof form appears unresolved and potentially problematic for construction and drainage issues.*

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- While the material palette seems suitable, there seems to be too many design moves competing for attention. The forms indicated in the renders do not appear to match what's indicated in the section drawings.
- The front streetscape, from building line to footpath, needs much more development (see notes in Landscape below).
- The roofscape could be both simplified, in form and construction, as well as its volume utilised more effectively in contributing to internal unit amenity: light, ventilation, spatiality (see notes in Amenity below).
- The small courtyard recesses to units 1 and 3 are probably not necessary, adding additional expense in return for little increased amenity. The continuous external side walls of these two units should be sufficient to introduce the necessary light, ventilation and outlook to the unit.
- However, the central light well in unit 2 is inadequate, and should be enlarged to a decent room size, to allow for genuine positive effects in natural light, ventilation and outlook (see notes in Amenity below).
- This larger central aperture in the overall massing might then inform a much simpler roof form, one that allows maximum light into the central courtyard of unit 2, while also directing rainwater runoff away from the internal court.

Assessing officer comment: It is agreed that the overall built form is acceptable. The front façade design has addressed the concerns raised in the original application with the balconies aligned with neighbouring development at No.6-6B Chester Avenue and with clear balustrades proposed to lessen their dominance in the façade. The pitched roof form will not visually dominate the streetscape and is within the building height RLEP 2012 controls. A simpler, flatter roof form as adopted at No.6-6B Chester Avenue would address the concerns of the DEAP and improve the effectiveness of the internal courtyard to Unit 2 in providing more natural light and ventilation (refer Figure 31 & 32). A condition of consent has been included for amended plans with a resolved flat roof design. The small courtyards to Units 1 and 3 may not dramatically increase amenity but will assist with ventilation and are a feature of the NSW Pattern Book designs.

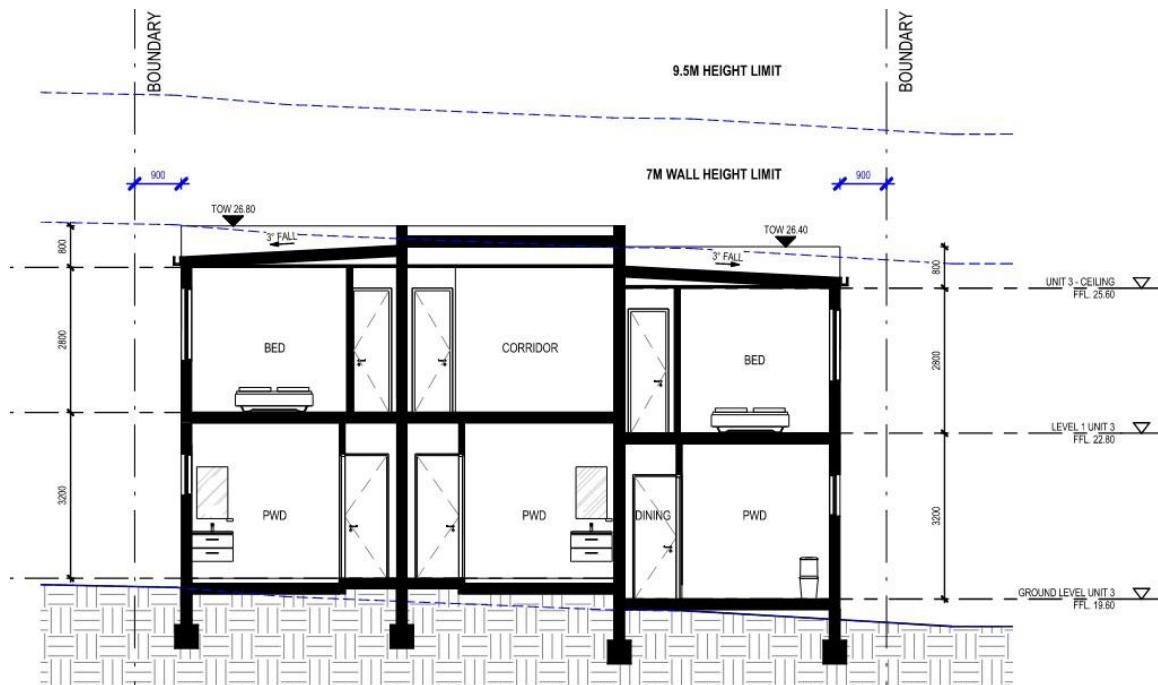


Figure 31: Cross-section of No.6-6B Chester Avenue (Source: DA/64/2023)

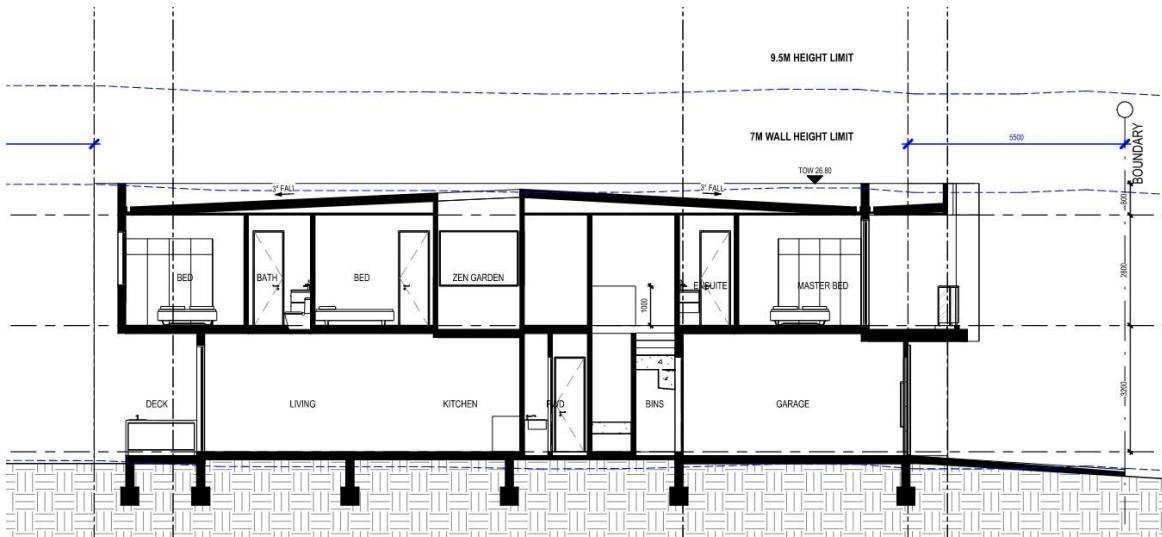


Figure 32: Long-section of No.6-6B Chester Avenue (Source: DA/64/2023)

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3. Density

- The proposal, despite the minor non-compliances noted above, fits well within the density of the surrounding context.
- As noted, internally unit 2 suffers from a lack of amenity due to being landlocked in the centre of the building – more refinement to this unit is required (see notes in Amenity below).

Assessing officer comment: The amenity of Unit 2 has been improved from the original proposal with the introduction of the courtyard. With conditions of consent to further increase the size of this courtyard and to lower the roof form, the amenity of this unit will be acceptable.

4. Sustainability

- Units 1 and 3 have ample opportunity for natural light and ventilation; care should be given to the operability of both high and low windows to ensure cross ventilation.
- The proposed “wind tunnels” indicated in the plans will not work – a long, enclosed duct is not a means of harnessing natural air movement.
- It would be more effective use the volumes possible in the roof forms to create higher spaces, with high level ventilation to exhaust warmer air and create natural flows.
- In the case of Unit 2, the central void should be enlarged into a proper courtyard size – this will significantly improve the natural light and ventilation.
- Given the site coverage, all rainwater falling on the roof should be collected, stored, treated and re-used, for toilets, laundries and garden irrigation.
- Stormwater should be directed towards absorptive garden beds, rather than the street.
- The extensive roofscape is a prime opportunity to incorporate solar PV panels to generate electricity for the residents. Provision for battery storage should be incorporated into the garages.

Assessing officer comment: The recommendation to increase the size of the internal courtyard to Unit 2 has been adopted with a condition of consent that will double its width and create a proper courtyard. Additionally, the condition of consent to amend the roof form to a flat roof will further improve the natural light and ventilation. The flat roof form also increases the future capacity of the roof to accommodate solar PV panels. The overall design of the alterations and additions to the dwelling will promote light and ventilation throughout the dwelling and a BASIX Certificate has been provided with the application.

5. Landscape

- As noted in the Panel session, the applicant needs to get a comprehensive landscape design prepared for the development, dedicating attention to streetscape, the front garden, minimising driveways, maximising dense vegetation, increasing tree canopy and creating a series of viable and usable garden spaces across the site. It is noted that the current landscape plan does not match the architectural drawings.

- The front streetscape and public domain treatment needs to be considered, including the incorporation of all existing trees along the public footpath, as well as necessary new trees required to achieve the canopy requirements.
- The driveways should be minimized in terms of hard surfaces, and treated more as footpaths that a car can drive on, rather than a driveway one walks along to enter their residence.
- Permeable paving solutions should be explored for the minimum surface coverage and maximum permeability.
- A permeable front fence should be considered in those lengths of the street frontage not occupied by vehicle crossings; this will create a greater sense of enclosure for the front garden, which does have the possibility of being used as a social space, with the right design treatment.
- Those areas of the front garden not occupied by wheel strips should be as densely planted as possible, with endemic, low water species, to increase amenity, streetscape appearance and local biodiversity.
- The side verges of the development should not be hardscape, but should also be areas of soil and planting – this will increase the amenity, absorption and biodiversity of the site.
- Trees should be planted in the garden areas in front of the unit entries, in addition to shrubs and low planting.
- Trees should be incorporated into the back garden planting palette, of suitable species to provide adequate shade when mature.
- Details should be provided for external fences separating the individual unit back gardens – none are indicated in the architectural drawings, but seem to be included in the landscape plan.
- External decks should be nominated and detailed, in terms of materials and extents. None are indicated in the architectural drawings, but seem to be included in the landscape plan.
- Provision should be given in the back gardens for on-site composting for organic waste, and clothes drying.

Assessing officer comment: The DEAP comments to improve the landscaping and front setback area have been adopted by conditions of consent (refer Condition. 20 & 2.c.).

6. Amenity

- As noted above, Unit 2 suffers from a real lack of amenity, including natural light, ventilation and outlook.
- Additionally, the reduction in length of the unit results in a kitchen that is undersized for this type of unit.
- Increasing the current light well to a usable courtyard size will significantly improve this unit.
- This may result in the unit getting longer, trading back garden space for internal courtyard garden space.
- This may allow some reorganising of the internal plan to have living spaces on both sides of the central courtyard, making it a feature of the unit.
- The upstairs studies in Units 1 and 3 seem overly large – with potential replanning via removal of the light well recesses, they could become simpler spaces, with the wardrobe zigzag better utilised between bedrooms to avoid having to place furniture against a window in Bed 3.
- Replanning of the ground and first floors of all units should also consider the provision of additional general storage space (sports & garden equipment, luggage, linen, etc). There is currently no allowance for this type of storage in any of the units.

Assessing officer comment: As discussed, the recommendation to increase the size of the internal courtyard to Unit 2 has been adopted with a condition of consent. The living room is to be extended by 1.5m toward the rear setback. A further increase would cause a non-compliance with the 8m rear setback control and reduce the amenity of the rear yard. The large studies could be utilized to provide storage needs.

7. Safety

- There are no apparent safety issues.

Assessing officer comment: DEAP comment noted.

8. Housing diversity and Social Interaction

- *The Panel is supportive of this type of housing in this area, as it meets a local demand.*

Assessing officer comment: DEAP endorsement of housing typology noted.

9. Aesthetics

- *As noted in the introduction, the front façade design requires further resolution, along with an integration with the front garden/streetscape design.*

Assessing officer comment: Condition of consent requiring updated landscape design in front setback area will create an acceptable streetscape presentation.

11. Conclusion

That the development application for demolition of existing building/structures, tree removal and construction of 3 x 2 storey attached dwellings, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDPC 2013.
- The proposal is consistent with the principles contained within Chapter 6 'Low and mid rise housing' of the Housing SEPP 2021,
- The applicant has provided sufficient justification to support varying the lot size, frontage width and floor space ratio development standards with regarding to multi dwelling housing (terraces) in the Housing SEPP 2021.
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- Subject to the imposition of the following conditions of consent:
 - The internal courtyard to Unit 2 is to be extended by 1.5m to west with the study above on the 1st floor to be deleted. The living room is also to extend 1.5m to the west to accommodate the larger courtyard and is not to extend beyond the 8m rear setback proposed.
 - The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
 - WF1.4
 - WF3.4
 - Front boundary fencing is to be provided with a maximum height of 1.2m (measured from existing ground level), with the solid portion not exceeding 600mm except for piers. The non-solid portion of the fence is to be constructed with lightweight materials (such as timber panels, slats or the like) that are at least 30% open and evenly distributed along the full length of the fence.
 - The roof design is to be amended to a simplified flat or low-pitched roof form in lieu of the currently proposed pitched/complex roof structure. The amended roof design is to provide a consolidated, simplified roof profile, improve daylight access, ventilation and amenity to the internal courtyard of Unit 2 and demonstrate practical roof drainage, with rainwater directed away from the internal courtyard and adjoining boundaries.

- Amended landscape plan including an arrangement of decorative species throughout the front setback to improve the presentation of the development to the streetscape.

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Appendix 1: Referrals

1. External referral comments:

1.1. Design Excellence Panel Comments

Randwick Design Excellence Advisory Panel
Final Endorsed Comments



DA INFORMATION	
Application Number	DA/482/2025/REV
Address	4 Chester Avenue, Maroubra
Meeting Date	22 January 2026
Panel Members	Tom Rivard, Vishal Lakhia
Report Date	27 January 2026

INTRODUCTION

This document provides a summary of advice and recommendations arising from the Design Excellence Advisory Panel (DEAP) meeting held in relation to the above application.

The DEAP comments are intended to assist Council in their design consideration of an application, including assessment against Chapter 4 of the Housing SEPP and the design principles for residential apartment development (as applicable).

The DEAP is appointed by Randwick City Council as an advisory group, not a decision-making body. The written and verbal comments are the professional opinions of the Panel members and constitute expert design quality advice. The Panel members are suitably qualified persons with expertise in architecture, planning, urban design, heritage, and/or landscape architecture.

To address the DEAP comments, the Applicant may be requested to submit amended plans. Prior to preparing any amended plans, the Applicant must discuss the DEAP comments (and any other matter(s) that may require amendment) with the relevant Council assessing officer. Any amended plans submitted to Council must be accompanied by a written response that details how each of the DEAP comments have been satisfactorily addressed.

1. Context and Neighbourhood Character

- The site is in a wholly residential area of Maroubra, the Coral Sea Housing Estate.
- The subject site is near Coral Sea Park, a major local open space amenity, and close to Anzac Parade, the major thoroughfare and public transit corridor for the area.
- The immediate context consists of one and two-storey single family residences, as well as a collection of two and three-storey multi-unit residential buildings, mostly dating from the 1960's, when the suburb was established. Recent development has contributed contemporary residential buildings to this mix, predominantly of the same scale – 2-3 storeys, 3-6 units.
- In this context, the proposal is positive, introducing a necessary housing typology to the area.

2. Built Form and Scale

- The overall built form, of three individual units, demarcated by entries, balconies and garage doors, is fundamentally acceptable.
- The modelling and massing of the front (Chester Avenue) elevation still requires some resolution. The architectural expression and roof form appears unresolved and potentially problematic for construction and drainage issues.
- While the material palette seems suitable, there seems to be too many design moves competing for attention. The forms indicated in the renders do not appear to match what's indicated in the section drawings.

- The front streetscape, from building line to footpath, needs much more development (see notes in Landscape below).
- The roofscape could be both simplified, in form and construction, as well as its volume utilised more effectively in contributing to internal unit amenity: light, ventilation, spatiality (see notes in Amenity below).
- The small courtyard recesses to units 1 and 3 are probably not necessary, adding additional expense in return for little increased amenity. The continuous external side walls of these two units should be sufficient to introduce the necessary light, ventilation and outlook to the unit.
- However, the central light well in unit 2 is inadequate, and should be enlarged to a decent room size, to allow for genuine positive effects in natural light, ventilation and outlook (see notes in Amenity below).
- This larger central aperture in the overall massing might then inform a much simpler roof form, one that allows maximum light into the central courtyard of unit 2, while also directing rainwater runoff away from the internal court.

3. Density

- The proposal, despite the minor non-compliances noted above, fits well within the density of the surrounding context.
- As noted, internally unit 2 suffers from a lack of amenity due to being landlocked in the centre of the building – more refinement to this unit is required (see notes in Amenity below).

4. Sustainability

- Units 1 and 3 have ample opportunity for natural light and ventilation; care should be given to the operability of both high and low windows to ensure cross ventilation.
- The proposed “wind tunnels” indicated in the plans will not work – a long, enclosed duct is not a means of harnessing natural air movement.
- It would be more effective use the volumes possible in the roof forms to create higher spaces, with high level ventilation to exhaust warmer air and create natural flows.
- In the case of Unit 2, the central void should be enlarged into a proper courtyard size – this will significantly improve the natural light and ventilation.
- Given the site coverage, all rainwater falling on the roof should be collected, stored, treated and re-used, for toilets, laundries and garden irrigation.
- Stormwater should be directed towards absorptive garden beds, rather than the street.
- The extensive roofscape is a prime opportunity to incorporate solar PV panels to generate electricity for the residents. Provision for battery storage should be incorporated into the garages.

5. Landscape

- As noted in the Panel session, the applicant needs to get a comprehensive landscape design prepared for the development, dedicating attention to streetscape, the front garden, minimising driveways, maximising dense vegetation, increasing tree canopy and creating a series of viable and usable garden spaces across the site. It is noted that the current landscape plan does not match the architectural drawings.
- The front streetscape and public domain treatment needs to be considered, including the incorporation of all existing trees along the public footpath, as well as necessary new trees required to achieve the canopy requirements.
- The driveways should be minimized in terms of hard surfaces, and treated more as footpaths that a car can drive on, rather than a driveway one walks along to enter their residence.
- Permeable paving solutions should be explored for the minimum surface coverage and maximum permeability.
- A permeable front fence should be considered in those lengths of the street frontage not occupied by vehicle crossings; this will create a greater sense of enclosure for the front garden, which does have the possibility of being used as a social space, with the right design treatment.

- Those areas of the front garden not occupied by wheel strips should be as densely planted as possible, with endemic, low water species, to increase amenity, streetscape appearance and local biodiversity.
- The side verges of the development should not be hardscape, but should also be areas of soil and planting – this will increase the amenity, absorption and biodiversity of the site.
- Trees should be planted in the garden areas in front of the unit entries, in addition to shrubs and low planting.
- Trees should be incorporated into the back garden planting palette, of suitable species to provide adequate shade when mature.
- Details should be provided for external fences separating the individual unit back gardens – none are indicated in the architectural drawings, but seem to be included in the landscape plan.
- External decks should be nominated and detailed, in terms of materials and extents. None are indicated in the architectural drawings, but seem to be included in the landscape plan.
- Provision should be given in the back gardens for on-site composting for organic waste, and clothes drying.

6. **Amenity**

- As noted above, Unit 2 suffers from a real lack of amenity, including natural light, ventilation and outlook.
- Additionally, the reduction in length of the unit results in a kitchen that is undersized for this type of unit.
- Increasing the current light well to a usable courtyard size will significantly improve this unit.
- This may result in the unit getting longer, trading back garden space for internal courtyard garden space.
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- The upstairs studies in Units 1 and 3 seem overly large – with potential replanning via removal of the light well recesses, they could become simpler spaces, with the wardrobe zigzag better utilised between bedrooms to avoid having to place furniture against a window in Bed 3.
- Replanning of the ground and first floors of all units should also consider the provision of additional general storage space (sports & garden equipment, luggage, linen, etc). There is currently no allowance for this type of storage in any of the units.

7. **Safety**

- There are no apparent safety issues.

8. **Housing diversity and Social Interaction**

- The Panel is supportive of this type of housing in this area, as it meets a local demand.

9. **Aesthetics**

- As noted in the introduction, the front façade design requires further resolution, along with an integration with the front garden/streetscape design.

SUMMARY AND RECOMMENDATIONS

The Panel is supportive of the overall design strategy, of delivering three new dwellings on the site. The Panel considers that the recommendations in this report will ensure that all dwellings are sufficiently livable, and will provide levels of amenity expected by residents within the Randwick LGA. In the Panel's view, the current design fails to meet these expectations.

The Panel encourages the applicant to refer to the NSW Housing Pattern Book terrace designs in greater detail and to use these as precedent studies to inform a review of the proposal's internal configuration, external massing, architectural expression, roof form and materiality.

1.2. Ausgrid

1.2.2. Advice provided to Council dated 6 June 2025

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TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au

24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 13 13 65
ausgrid.com.au

This letter is Ausgrid's response under section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Ausgrid consents to the development subject to the following conditions: -

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Ausgrid Overhead Powerlines are in the vicinity of the development.

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

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

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

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

New Driveways - Proximity to Existing Poles

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

For Official use only

New or modified connection

To apply to connect or modify a connection for a residential or commercial premises. Ausgrid recommends the proponent to engage an Accredited Service Provider and submit a connection application to Ausgrid as soon as practicable. Visit the Ausgrid website for further details; <https://www.ausgrid.com.au/Connections/Get-connected>

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website:
www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

Should you require further information please contact Ausgrid via email to
Development@ausgrid.com.au

Regards,
Ausgrid Development Team

1.2.1. Further Advice provided to Council dated 14 August 2025**RE: 4 Chester Ave Maroubra_ Clearance power pole to driveway**

Development <Development@Ausgrid.com.au>

Mon, 30 Jun 2025 1:48:27 PM +1000

To "Info"<info@bryanlong.com.au>,"Development"<Development@Ausgrid.com.au>

Cc "B.Long"<b.long@bryanlong.com.au>

Hi Lily,

Thank for you contacting Ausgrid.

Your enquiry regarding the proposed driveway encroaching on the 1.5m clearance from the existing power pole has been submitted to Ausgrid's Design Group for review and consideration of a dispensation for 900mm clearance.

Following a review of the site location, asset type, and future placement, the Design Group has assessed the situation and approved a reduced clearance—from 1500mm to 900mm (measured from the nearest face of the pole to any part of the driveway, including the layback).

Regards,

David Su

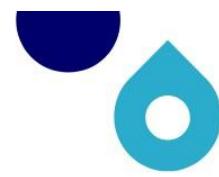
Engineering Officer - Asset Protection | Transmission Mains | Network Delivery Services



Level 1 (Building 2), 25-27 Pomeroy Street, Homebush NSW 2140
Development@ausgrid.com.au

Please consider the environment before printing this email.

1.3. Sydney Water Corporation



19 June 2025

Our reference: N/A

William Joannides
 Randwick City Council
william.joannides@randwick.nsw.gov.au

RE: Development Application DA/482/2025 at 4 Chester Avenue, Maroubra

Thank you for notifying Sydney Water of DA/482/2025 at 4 Chester Avenue, Maroubra, which proposes the demolition of existing structures, and construction of three attached dwellings with Torrens title subdivision. Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

Sydney Water position:	Condition of Consent applies
Condition of Consent which applies:	Section 73 and Building Plan Approval required See Attachment 1 for recommended wording for Sydney Water conditions to be included in the consent letter.
Additional comments:	Adjustments/deviations to the 225mm wastewater main traversing the site may be required. Maintenance structures located within the property boundary will need to be protected and access maintained. More information can be found in Sydney Water's Technical Guidelines – Building over and adjacent to pipe assets . We recommend the proponent contact Sydney Water as early as possible to prevent development delays where significant adjustments or design variations are required.
Other information:	This advice is not formal approval of our servicing requirements. Detailed requirements will be provided once the development is referred to Sydney Water for further applications. The <i>Sydney Water Development Application Information Sheet (for proponent)</i> enclosed contains details on how to make further applications to Sydney Water and further information on Infrastructure Contributions. A copy of this should be provided to the proponent in conjunction with the development consent. Please note that the available capacity may change over time depending on the rate of development and increased demand elsewhere in the potable water and wastewater catchments. Sydney Water does not reserve capacity pre-development and it is advised that the proponent applies directly to Sydney Water for a Section 73 Compliance Certificate as soon as feasible.

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



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Attachment 1 – Recommended Development Conditions**Prior to the issue of an Occupation/Subdivision Certificate:****Section 73 Compliance Certificate**

A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Our assessment will determine the availability of water and wastewater services, which may require extensions, adjustments, or connections to our mains. Make an early application for the certificate, as there may be assets to be built and this can take some time. A Section 73 Compliance Certificate must be obtained before an Occupation or Subdivision Certificate will be issued.

Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator.

Go to the Sydney Water website or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Prior to the issue of a Construction Certificate/Complying Development Certificate:**Building Plan Approval (including Tree Planting Guidelines)**

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to [Sydney Water Tap in®](#) to apply.

Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.

Tree Planting

Certain tree species placed in proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Section 46 of the Sydney Water Act specifies what might occur when there is interference or damage to our assets caused by trees.

For any trees proposed or planted that may cause destruction of, damage to or interference with our work and are in breach of the Sydney Water Act 1994, Sydney Water may issue an order to remove that tree or directly remove it and seek recovery for all loss and associated compensation for the removal.

For guidance on types of trees that can cause damage or interference with our assets see Sydney Water webpage Wastewater blockages. For guidance on how to plant trees near our assets, see Diagram 5 – Planting Trees within Sydney Water's [Technical guidelines – Building over and adjacent to pipe assets](#).

Sydney Water Corporation ABN 49 776 225 038
1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124
Telephone 13 20 92 Media (24/7) 8849 5151 sydneywater.com.au



If you require any further information, please contact the Growth Analytics Team at urbangrowth@sydneywater.com.au.

Yours sincerely,

Growth Analytics Team

Growth and Development, Water and Environment Services
Sydney Water, 1 Smith Street, Parramatta NSW 2150

Sydney Water Corporation ABN 49 776 225 038
1 Smith Street, Parramatta, NSW 2150 | PO Box 399, Parramatta, NSW 2124
Telephone 13 20 92 **Media (24/7)** 8849 5151 sydneywater.com.au



2. Internal referral comments:

2.1. Development Engineering

The Development Engineering team advised that the revised plans did not change the comments and recommended conditions from the original application. The original referral comments are replicated:

General Comments

There are no objections to the proposal subject to the comments and conditions provided in this report.

Parking Comments

Under Part B7 of Council's DCP 2013 each of the proposed **4-bedroom** residences are required to provide a minimum of **2** off-street car spaces whilst the proposed **2-bedroom** residence is only required to provide a minimum of **1** off-street car space. The submitted plans **do** demonstrate compliance with these requirements.

The proposed garages and driveways **comply** with the minimum requirements of Australian Standard 2890.1:2004 in regards to size, grades, and overhead clearances.

Drainage Comments

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

On site stormwater detention is required for this development.

The stormwater must be discharged (by gravity) either:

- i. Directly to the kerb and gutter in front of the subject site in Chester Avenue,
- ii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system).

Undergrounding of power lines to site

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

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

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

Power Pole Clearance

Development Engineering issued a Request For Information to the applicant regarding the insufficient clearance of the proposed driveway to the existing Ausgrid power pole in the street verge. Generally, Ausgrid requires a minimum clearance of 1.5m and the submitted plans did not satisfy this requirement. The applicant returned with correspondence from Ausgrid stating that the minimum clearance may be reduced to 0.9m for the subject site and, additionally, amended the architectural plans such that a clearance of 1.0m is now achieved. Therefore, Development Engineering raises no objection to the proposed driveway arrangement in relation to clearance from Ausgrid's asset.

Subdivision Comments

A subdivision certificate in respect to the 3-lot subdivision must be issued and subdivision plans registered at NSW Land Registry Services prior to the issuing of a full occupation certificate for this development.

2.2. Development Landscaping

This report is based on the following plans and documentation:

- **Amended** Architectural Plans by Bryan Long Group **REV C** dated 20/10/2025;
- Landscape Plans by Monaco Designs, **REV D** dated 6/11/2025;
- Statement of Environmental Effects by Andrew Martin Planning;
- Detail & Level Survey by TECA Surveyors dated 19/05/2025;

General Comments

There are no objections to the proposal subject to the comments and conditions provided in this report.

Landscape Comments

Inspection was undertaken on Wednesday 11th June.

Within Chester Avenue Street verge adjacent subject site, three semi mature *Olea Europa Var. africana* (African Olive) trees, 5 metres high, poor condition, fair health, poor vigour, poorly pruned at younger age, not planted by council, probably planted by resident at some point.

The middle tree has been designated to be retained and protected, both trees either side have been proposed to be removed, these outer trees are of poor vigour, splay heavily 600mm above ground, not significant to retain, **both to be removed** to allow for proposed new crossovers.

The middle tree, which has been nominated for retention, is of same vigour and splay as outer trees, pruning to southwestern aspect may be cut back to main trunk to maintain clearance for proposed southern crossover, whilst this can be achieved, it will leave the species off balance and lean more to the northeast, with these factors, low retention value, poor vigour, this tree **can also be removed** and a more suitable tree placed back within its place.

Moving within frontage of property, either side of internal footpath, *Yucca* species and *Strelitzia* species, not significant enough to retain, in direct conflict with proposed works, **can be removed at any time.**

Moving to the southern side setback along the common boundary east to west, small insignificant *Camelia* species, to the west an mature *Cotoneaster* species, listed as an undesirable species under B5 2013 DCP, in poor condition and vigour, both low significance species, in direct conflict with works, both **can be removed**, the only other specimen which is also in direct conflict with works, semi mature bottlebrush species plotted centrally along the side setback, 3 metres high, sooty mould infestation and also not significant enough to retain.

Moving to rear of property, large mature *Jacaranda mimosifolia* (Jacaranda) 10 metres high, good vigour, fair condition, medium significance, heavy suckering, soft unions indicating rot between both lower main trunks, large heavy limbs protruding over western neighbouring properties.

Councils officer recommended an assessment report by a qualified arborist, which required some additional information on the health status of this species, the specimen was assessed four days after council site visit on 14 June 2025, the Jacaranda was seen in fair condition, good vigour, medium ULE, short lived, requires substantial remedial tree care, which would give potential longer life with improved growing conditions, proposed new fences will surround the tree and become more restricted.

Lower trunk is trunkless or branched like a mallee formed tree, co-dominant leaders extend from ground, unions measuring 1.4 metres above ground level, which have inclusion appearance,

pockets of decay within unions and base of trunk, northeastern leader has visible rib which indicates internal cracks within trunk which is potentially unstable.

With current state and habit, identification of defects will result in short term retention, even with remedial tree care, which may see removal of northwestern leader and with a high proportion of epicormic growth will then leave a great portion of the tree without a canopy, this will then have species unbalanced and look aesthetically poor.

It has uncharacteristic habit as it has been previously lopped at 3 & 4 metres resulting in high volume (50%) of epicormic shoots which can fail in extreme weather events, cross branching within crown was seen which contributes to rubbing and possible future diseases, tree is visible from surrounding buildings, although not visually prominent as its partially obstructed by buildings when viewed from street, only visual aspects can be partially seen from Fitzgerald Avenue through the empty crowned owned land.

Councils' internal system and (Site drainage Plan REV D dated 21/4/2025) notes a 150mm main sewer pipe running through the rear of subject site, north to south, measures 900mm from rear boundary, which services neighbouring No.161 northern property, which then runs west to east directly under Unit 3, the Jacaranda species SRZ (Structural Root Zone) measures 3.3 metres diameter which the tree is directly on top of sewer line, which can be problematic as **Jacaranda trees are extremely invasive**, which these species should never be plotted near drains/sewer services lines.

The Jacaranda is not registered on council's significant tree register nor an endangered rare species, with all these above-mentioned factors, safety reasons and future costs of removing a large tree from a newly designed development, which can be removed prior to works, costs will be lower, removal would be quicker whilst works are ongoing.

Additional non-invasive trees will be plotted within rear common boundaries of Units 1, 2 & 3 and additional smaller deciduous species with the two outer frontage units to complete the minimum 15% tree canopy regulations under new 2025 NSW Tree Canopy Guide for Low- & Mid-Rise Housing

An assessment against NSW Tree Canopy Guide for Low & Mid Rise Housing 2025 revealed that compliance is achieved with:

- Site coverage/deep soil (29% achieved, minimum 15% required)
- Canopy cover. The DCP requires that canopy cover amounting to a minimum 15% of the total site area must be achieved, the **Amended Landscape Plans** will comply with this control.

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

1. Variation to Floor Space Ratio Development Standard under Sections 173(3)(d) of the Housing SEPP 2021



D6/26

**CLAUSE 4.6 REQUEST TO VARY
SECTION 172(3)(d) of SEPP (HOUSING) 2021
- FLOOR SPACE RATIO (FSR)**



**4 Chester Avenue,
Maroubra**

26th November 2025





Section 1 1.0 Introduction

- This is a written request under Clause 4.6 of the Randwick Local Environmental Plan 2012 (RLEP 2012) to vary the non-discretionary Floor Space Ratio (FSR) *development standard* for construction of multi-dwelling housing pursuant to the provisions of **Section 172(3)(d)** of the **SEPP (Housing) 2021**, being a non-discretionary *development standard*. A separate clause 4.6 written variation has been prepared for variations to Section 172(3)(a)(b) and S173(3)(b) and (d) of SEPP 2021 relating to site planning. The relevant clauses have been grouped as requested by Council.
- The subject site is legally described as Lot 3 in DP 727626 4 Chester Avenue, Maroubra. The site is rectangular in shape and has a total site area according to title of 496.2m².
- The non-discretionary development standard subject of this written variation is the maximum FSR of **0.7:1** based on a proposed FSR of **0.75:1**.
- The proposal complies with the maximum FSR under the RLEP 2012.
- The proposal has a lot size of 496.2m².
- The maximum building height complies.
- As advised by Council the relevant non-discretionary development standards are a *development standard* for the purposes of the *EP&A Act 1979*. Clause 4.6 recognises development standards which are relevant under the RLEP as well as any other environmental planning instrument meaning the SEPP (Housing) 2021.
- The proposal complies with the RLEP 2012 development standards however the recent provisions of the SEPP (Housing) 2021 and specifically Chapter 6 Low and Mid Rise Housing (herein 'LMR') applies in accordance with Council. The applicant has opted to address the Council's advice by preparing the Clause 4.6 variations for abundant precaution.
- The subject application is not typical in that the LMR provisions under SEPP 2021 housing prescribe more onerous controls than the current RLEP provisions which is odd in that the strategic planning intent of the LMR is to incentivise development which is confirmed in Section 162 of the SEPP 2021 which relevantly provides:

"162 Aim of chapter

The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport."

- This request to vary the Housing SEPP non-discretionary development standards considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2)*.
- The objective of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- There are sufficient environmental planning grounds to warrant a variation of the development standard in this specific case given that the primary purpose of the SEPP 2021 and specifically Chapter 6 Low and Mid Rise Housing (LMR) is to incentivise development. In this case the LMR clearly does not incentivise development given that the controls are more restrictive than the FSR control under the RLEP and RDCP. Strict compliance with the SEPP 2021 would thwart the achievement of the objectives set out under Chapter 6 LMR of SEPP 2021 as well as the objectives of the zone.
- The relevant plans relied upon are those identified as the plans prepared by Bryan Design submitted with the subject S8.2 Review of Determination. The S8.2 scheme incorporates a range of changes to the design to address the reasons for refusal.



Section 2 Site and proposed development

2.1 Subject site

The site known as 4 Chester Avenue, Maroubra and legally described as Lot 3, DP 727626. The site is rectangular in shape and has a total area according to title of 496.2m². It is located on the eastern side of Chester Avenue, being the second property south of the intersection of Chester Avenue and Fitzgerald Avenue.

The site contains a number of mature trees and domestic plants – front and rear of the existing dwelling.

Existing on the site is a two storey, single dwelling. Vehicular access is via single crossover and driveway to the site. There are three street trees within the extent of the front boundary line.

An aerial view of the site is presented in Figure 1 below.



Figure 1: Aerial view of the site



Figure 2: View of the site from Chester Avenue



D6/26 2.2 Proposed development

The proposal involves the demolition of site structures and construction of three (3) attached dwellings, tree removal, landscaping, drainage, driveways and Torrens title subdivision.

The proposal comprises three attached dwellings (townhouses), each on their own lot, comprising 2 x 3 bedroom + study and 1 x 2-bedroom + study dwellings. Each dwelling is to have an integrated single garage and space for parking on the driveway.

The application includes new driveways for each lot, landscaping and drainage. The development is to be subdivided into three (3) Torrens title allotments.

Proposed lot sizes: Lot 1: 176.31m²; Lot 2: 143.54m² & Lot 3: 176.31m²

Lot widths: 5.165m. 4.205m, 5.165m.

Proposed FSR: 0.75:1



Fig A: Roof Plan



Fig B: Street Elevation



Section 3 Planning instrument, development standard and proposed variation

3.1 Variation to development standard

The relevant section of the Housing SEPP to be varied is the **0.70:1 FSR** control under **Section 172(3)(d) of the Housing SEPP 2021**. This Section relates to the non-discretionary development standard for multi-dwelling housing. Section 172(3) relevantly provides.

172 Non-discretionary development standards—multi dwelling housing

- (1) *This section applies to development for the purposes of multi dwelling housing on land in a low and mid rise housing area in the following zones—*
 - ...
 - (c) *Zone R3 Medium Density Residential,*
 - ...
- (3) *The following non-discretionary development standards apply in relation to development for the purposes of multi dwelling housing (terraces)—*
 - (a) *a minimum lot size of 500m²,*
 - (b) *a minimum lot width at the front building line of 18m,*
 - (c) *if no environmental planning instrument or development control plan that applies to the land specifies a maximum number of car parking spaces per dwelling—a minimum of 0.5 car parking spaces per dwelling,*
 - (d) **a maximum floor space ratio of 0.7:1,**
 - (e) *a maximum building height of 9.5m. (our emphasis)*

The requested variations are as follows:

1. **FSR required 0.7:1: FSR proposed 0.75:1. Variation of 0.05:1 or 7.14%**

Proposed Plan showing the current lot size and width and FSR are provided below:



Figure 5: GFA calculation and 0.75:1 FSR





Section 4 Development Standards

A *development standard* is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."* (our emphasis)

Section 172(3)(d) of SEPP 2021 is a development standards falling into (a) .

Section 5 Clause 4.6 of RLEP 2012

6.1 Clause 4.6 of the **RLEP 2012** provides a legal pathway by which an applicant can vary a *development standard*. Clause 4.6 of **RLEP 2012** relevantly provides as follows:

4.6 Exceptions to development standards

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this*



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

Response to Clause 4.6 of RLEP 2014

1. Clause 4.6 1(a)(b)

The following provides a response to the Clause 4.6 provisions:

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The purpose of Clause 4.6 of RLEP 2012 is to provide flexibility in the application of development standards.

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

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

Justification within this written request demonstrates that an appropriate degree of flexibility should be applied to this particular application notwithstanding the planning variation relating to bulk and scale (massing).





2. Clause 4.6 (2)

The following provides a response to relevant Clause 4.6(2) of RLEP 2012. Clause 4.6(2) of RLEP 2012 provides:

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

The FSR bulk and scale development standard is not expressly excluded from the operation of cl4.6 of RLEP 2012 and accordingly, consent may be granted.

2. Clause 4.6 (3)(a) and (b)

Clause 4.6 (3) requires the making of a written request to justify the contravention of a *development standard* and states as follows:

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

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

The proposed development does not comply with the massing controls in **Section 172(3)(d) of SEPP 2021**.

Strict compliance with **Section 172(3)(d) of SEPP 2021** being a *development standard* is considered to be '*unreasonable and unnecessary in the circumstances of this case*' as justified in this written variation request.

The intent of the policy is to incentivise development and specifically housing and therefore the controls are actually hindering housing delivery and housing choice being in conflict with more flexible controls under the RLEP.

The relevant justification dealing with **Clause 4.6 (3)(a)** criteria is contained in this written variation request.

This written variation request demonstrates that strict compliance is unreasonable and unnecessary in the circumstances of this case and sufficient environmental planning grounds exist to justify contravening the development standard so as to satisfy **Clause 4.6 (3)(b)** as detailed in this written request.

3. Clause 4.6(6)

Not relevant to this application.

4. Clause 4.6(8)

Not relevant to this application as no BASIX provisions are to be varied.





Clause 4.6(4) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

Section 6 Compliance is Unreasonable or Unnecessary - Clause 4.6(3)(a)

In dealing with the "unreasonable and unnecessary" we refer to Preston CJ where he identifies and validates at least 5 arguments available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ concluded as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

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

The first way identified in *Wehbe* is to justify this written variation (as set out at 42 of the judgment):

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

This written variation to **Section 172(3)(d) of SEPP 2021** relies in the first instance by demonstrating that compliance is *unreasonable and unnecessary* as the objectives of the development standard are achieved notwithstanding a variation to the development standard.

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the controls, it is necessary to identify the purpose of the Housing SEPP Non-discretionary controls and then progress to dealing with the consistency or otherwise with the application of the numerical controls to the proposed development.

The Housing SEPP does not contain any specific development standard objectives for the non-discretionary controls.





Non-discretionary controls within the Housing SEPP 2021 aim to provide certainty and predictability for developers, allowing them to proceed with development if they meet the specified requirements, regardless of the local planning rules.

In this case, the proposed attached development does not comply with the FSR discretionary controls for multi-dwelling housing and a variation request is required as the Housing SEPP is an environmental planning instrument containing development standards. In certain (atypical circumstances) there will be some local controls that are in excess of the LMR controls in some local government areas. The target of the LMR control is really local government areas (LGA's) that had retained outdated controls for development in the R3 Medium Density Residential zones or simply had unnecessary highly restrictive controls. However Randwick LGA is not one of those LGA's yet was affected by the blanket LMR controls for the identified town centres under Chapter 6 of the SEPP 2021. As set out previously the RLEP has a **FSR of 0.75:1** yet oddly the LMR has an **FSR of 0.7:1**.

Through the DA process the Council can be satisfied that each new attached dwelling achieves a suitable level of amenity and streetscape presentation with the built form proposed at 0.75:1. There are no significant adverse impacts due to the FSR because the impacts are those which manifest from a height and RLEP compliant FSR as well as an east west lot. Each development on each lot affects solar access and is an unavoidable consequence of the east - west lot orientation. Each dwelling has north - north-west facing open space as well as a front yard area facing east to provide sufficient amenity to occupants.

As requested by Council and in dealing with unreasonable and unnecessary the principles of the policy have been addressed below noting that there are no specific objectives for FSR. Principles of the policy are used to inform the actual strategic targets and therefore some objectives relate to areas which are not targeted by this particular development like short term accommodation for very low to medium income households. Overall the proposed development performs well when assessed against the policy objectives.

3 Principles of Policy

The principles of this Policy are as follows—

Provision of SEPP 2021	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing,	The provision of three attached dwellings adds to the diversity of the local housing supply which is important given the zoning of the land and the strategic location of the site within the designated LMR area. Likely that one or more dwellings will end up in the rental market. Owner occupiers of subject development may well be renting at present that will potentially free up rental housing elsewhere. Objective achieved.
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	Even with compliant development there would be no guarantee that the development of this particular site would provide housing for very low - moderate income households. This objective is targeted to other chapters of the SEPP like retention of affordable housing or those chapters that provide incentives to development of boarding houses and Build



	<p>to Rent (BTR). Overall objective is not thwarted as significant number of other sites within the locality that could be development for very low to moderate income earners. Site is not large enough nor does it have FSR and density to support BTR development needing 50 units or more.</p>
(c) ensuring new housing development provides residents with a reasonable level of amenity,	<p>Reasonable amenity provided to each dwelling in the way of solar access, privacy and outlook. Each dwelling has a well-connected POS outdoor area that is easily accessed directly from the internal living spaces at the ground floor. The diagrams show how the dwellings are ventilated with ventilated skylights. North and north west facing POS to rear which is private and well connected to the rear yard.</p>
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	<p>Development is ideally located within the defined LMR area under the SEPP 2021 which the State Government has set as being an area that is connected to transport and goods and services.</p>
(e) minimising adverse climate and environmental impacts of new housing development,	<p>The impact of this development with its slab on ground design is consistent with the level of impact anticipated for those uses identified as being permissible in the zone.</p>
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	<p>The overall built form and style of the façade will add vitality to the streetscape. The presentation to the street is overwhelmingly 2 storeys and the roof is contained behind the main façade. The roof gravitates (slopes) away from the front, rear and side boundaries so the perceived visual impact of the roof element is reduced. Wall heights and overall scale is reflective of a 2 storey form. The proposed bulk and scale at 0.75:1 FSR is compatible with the existing and future form anticipated in the area accepting that infill development does not need to be the same to be compatible (see Project Ventures v Pittwater Council).</p>
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	<p>The objectives more relevant to other sections of the SEPP designed to increase short term accommodation. This particular site in this location is well suited to more permanent accommodation and other areas existing within the defined LMR to provide short term offerings.</p>
(h) mitigating the loss of existing affordable rental housing.	<p>No loss of existing affordable housing.</p>



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R3 Medium Density Residential

The objectives of the R3 zone are as follows:

- *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.*

An enquiry is now made in relation to the ability of the proposal and the identified variations to the Housing SEPP provisions, as one departing from the **0.70:1 FSR** non-discretionary standard, to reasonably satisfy the stated objectives of the zone.

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

The proposal is for the construction of three, new attached dwellings. Each dwelling includes open-plan living and dining, kitchen, laundry, bathroom, and bedrooms (each level) with integrated single garage and parking on the driveway. The site is zoned for the purpose of providing additional housing which is achieved by this proposal. Council has provided a 0.75:1 for other land outside the LMR with a R3 zoning. The objective is achieved.

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

The proposal increases the variety of housing types and sizes for the local area. It replaces a single brick dwelling and provides for new attached row house style development with improved landscape outcomes. The objective is achieved.

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

The objective is not relevant to the proposal.

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.

The development provides for architecturally designed dwellings that are consistent with the emerging nature of medium density development in the area and the desired future character of the area. The proposal preserves the regular subdivision pattern and orientation of the lots and siting of dwellings along Chester Avenue. The overall bulk and scale and form of the attached dwellings is similar to that of the recently approved developments in the immediate area. The proposed development will contribute to the emerging contemporary townhouse style and density of housing in the neighbourhood. The pattern of subdivision is not that dissimilar to a pattern that would evolve from a strictly compliant development. An applicant





is able to consider the outcomes of the SEPP 2021 in dealing with future character (see *Big Property Pty Ltd v Randwick City Council [2021] (Big Property)*, *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG)*). The bulk and scale found within the R3 streetscape will increase over time. The height complies with the RLEP and as stated the scale is 2 storeys with pitched roof ensuring the bulk and scale is compatible. The objective is achieved.

As demonstrated in the site planning clause 4.6 variations (see separate document) the immediate locality has been subject to subdivision to narrow lots. The proposal whilst departing from the SEPP 2021 site planning controls is compatible with the existing and emerging character (see separate clause 4.6 variation).

Overall the proposal is compatible with the emerging character with regard to bulk and scale and the form is arranged such that the presentation to the street and neighbours is overwhelmingly 2 storeys.

To protect the amenity of residents

The development has been architecturally designed to address the visual and acoustic privacy of adjoining neighbours via the orientation of windows to the front and rear of the dwellings, screening and separation of outdoor areas, landscaping and beautification of each site.

In terms of amenity the proposal has been designed with all rooms in Unit 1 and 3 having external windows. Unit 1 faces north and will receive ample direct and reflected ambient light and ventilation. Unit 2 is the central unit and has a number of design features added to improve internal amenity with regard to solar access and ventilation. The design of unit 2 adopts a void along with a series of ventilated skylights to provide adequate natural light. The front door is aligned with the rear opening so that air flow can pass through the dwelling. The void at the first floor level has a skylight so that light can penetrate into the dwelling. The roof has also been removed over the rear section of the dwelling. Bedroom 2 then borrows light from across the void to the balcony. Skylights can be ventilated skylights to allow hot air to escape and improve air flow through the dwelling. Diagrams by Bryan Design show the proposed ventilation through skylights.

All rear deck areas face north and will achieve 2.5 hours of solar from 12.30 to 3pm. The size of the dwellings is comparable to 3 and 4 bedroom units in a residential flat building and in this regard 2 hours solar is accepted under the ADG for units. Therefore the solar access to the rear POS and living/dining is seen to be acceptable. It's noted that the ADG permits 15% of the units in all development to face south and those units could potentially have no direct solar access being within the 15% south facing and within the 30% not required to achieve 2 hours. Overall the internal layouts of the dwellings is not convoluted and follows a simple layout so that the best air flow and solar gain is achieved on an east - west layout.

The neighbouring sites are overshadowed to some extent which is a consequence of the east - west orientation and is no greater than what would result from a RLEP compliant height and FSR. The proposed built form does not extend past the rear corner of the neighbouring property. The overshadowing is from a 2 storey development and is no greater than what is typically excepted from infill development. The height and the FSR comply with the RLEP. The neighbours are not exposed to any significant additional impacts because of the variations sought under this application.

The number of bedrooms have been reduced for the two 4 bedroom dwellings which are now 3 bedrooms plus a study. The study areas assist with work from home and are genuine study rooms due to the design and floor area limitations. The overall intensity of development has been reduced under the S8.2 scheme. The extent of living space is now more proportionate to the bedroom numbers. The lounge and dining areas are very similar to the areas promoted by the Pattern Book. The extent of solar achieved by each dwelling for an east-west





orientated lot is the same or similar to the solar access achieved by dwellings under the Pattern Book.

Under the S8.2 scheme two of the three dwellings have access to the internal areas in a direct line from the front door to internal areas. The southern 3 bedroom dwelling provides a side entry as well as a front door however this dwelling requires access around the parked vehicle in the garage. The pattern book only provides an example with 2 of the 3 dwellings having vehicle access. In this case the driveway can only be positioned in the location proposed due to the power pole therefore no option exists to relocate the entry door to the northern wall of the southern most 3 bedroom + study dwelling.

As per the LPP refusal NSW Pattern Book is seen as a usual reference to measure amenity and the overall performance of the design response. The proposal is seen to be consistent with the Pattern Book because:

- The layout essentially mimics the pattern book except for the garage to the southern most dwelling
- Compliant rear setbacks
- Compliant front setbacks
- Compliant side setbacks
- Internal voids to each dwelling to improve solar access
- Use of wheel strips to increase green spaces within the front building setback
- Corner windows and design improvements to assist solar and air flow

Having regard to the above the objective is achieved.

To encourage housing affordability

Each dwelling is will marketed to reflect the local housing market values. The level of fitout of each dwelling will not exceed the expectations of the area, ensuring that the new housing remains affordable and relative to the community profile of the area. The objective is achieved.

To enable small-scale business uses in existing commercial buildings

The objective is not relevant to the proposal.

Section 7 Sufficient environmental planning grounds – Clause 4.6(3)(b)

This clause 4.6 submission responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The variation relates to Housing SEPP multi-dwelling housing non-discretionary provisions and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter.

Justification provided for the variation applies to this particular application and not to environmental planning grounds that could apply to all lands zoned R3 Medium Density Residential. That is R3 zoned land outside of the LMR affected land will continue to be developed at an increased density as specified under the RLEP based on a FSR of 0.75:1 under the RLEP 2012.

Of note is the fact that sites within 400-800m of the LMR town centre are entitled to a max FSR of 1.5 where residential flat buildings are permissible with consent as in the subject case. There



will be sites in the local area that achieve 500sqm and will propose FSRs up to 1.5:1 under Chapter 6 of the Housing SEPP and may also then apply Chapter 2 for an additional 30%FSR and height. The future character will be informed by Chapter 6 and Chapter 2 of the Housing SEPP and in accordance with decisions like Big Property v Randwick and Pavlakos Capital v Canterbury Bankstown Council the future character will be informed by incentivised housing provisions.

The variation would affect those lands captured by the LMR zoned R3 Medium Density Residential whilst all other lands outside the LMR mapped area will be developed at the proposed 0.75:1 FSR.

This in itself is a sufficient environmental planning ground to vary the numerical controls for FSR because the sites that are affected by the more restrictive 0.7:1 FSR are those sites or areas which have better access to services, facilities and public transport. It makes no planning sense to apply a more restrictive control to an area that is better placed to take advantage of access to services and transport but yet then allow R3 zoned land in all other areas of the LGA to develop under the more favourable RLEP provisions. This is antipathetic to the sole purpose of SEPP 2021 which is to incentivise development.

The environmental planning grounds justification for the variation is provided as follows:

- Useable living space area is provided for the residents of each dwelling notwithstanding the additional FSR of 0.05:1.
- No significant adverse impact by way of privacy, overshadowing, bulk or scale of the development.
- Generally consistent with the NSW Government Pattern Book requirements.
- Proposal provides high quality residential accommodation for the occupants and makes best use of the site.
- The proposed development is compatible with the residential character of the area having regard to the surrounding built form and landscape setting.
- Ability to satisfy the zone objectives under the RLEP 2012 or not offend those objectives.
- Enhances the vitality of the Chester Avenue streetscape.
- Ability to satisfy the landscaped area objectives under the RDCP.
- The bulk and scale and form of the development complements the streetscape due to its 2 storey presentation to the street.
- Area subject to change to built form due to Chapter 6 of the LMR for flat buildings as well as Chapter 2 incentives for some sites.
- The building height and parking provisions area are fully compliant with the Housing SEPP controls.
- There are no significant adverse impacts on the surrounding neighbours noting that a CDC dwelling can be built 900mm from the boundary at 2 storeys and with a part basement. Further it is possible to construct a 0.75:1 FSR built form under the RLEP 2012 in the R3 zone.
- The development is consistent with the relevant objectives of the R3 Medium Density Residential Zone.
- Development reasonably satisfies the principles under section 3 of SEPP 2021.
- Allows for the orderly and economic use of the land which is consistent with the EP and A Act 1979 objectives.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to **FSR**. Clause 1.3 of the EP and A Act 1979 relevantly provides:





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"1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,**
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,**
- (c) to promote the orderly and economic use and development of land,**
- (d) to promote the delivery and maintenance of affordable housing,**
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,**
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),**
- (g) to promote good design and amenity of the built environment,**
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,**
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,**
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)**

A development that complies with the land use zoning of the site (R3 Medium Density Residential) satisfies the objectives of under S1.3 EP&A Act 1979.

The architectural plans satisfy the objectives in bold given that:

- The design promotes the orderly and economic use of the site that reasonably preserves amenity and the streetscape character of the area.
- The proposal preserves the environmental amenity of the area providing adequate landscaping and softening of the development when viewed from the public realm.
- Complies with the height and FSR provisions of the RLEP 2012, reflecting the local planning policies and expected density and scale of development by the Council.
- The landscape treatment seeks to soften the built form and reduce potential for adverse amenity, visual and privacy impacts on surrounding land uses.
- There are no significant adverse impacts on the surrounds or immediate neighbourhood.
- The private and public domains at the street boundary will be well defined for safety and security of occupants.
- The development follows the built form, scale and design cues established by recent development approved in the local area.
- The proposal is supported by a BASIX Certificate and undertaking by the developer to minimise the energy needs of each dwelling.
- Achieves the social and economic goals (objective b) set down under the LMR which is to incentivise residential development

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the **0.70:1 FSR** under the Housing SEPP 2021.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.





Additionally, there is a lack of significant adverse amenity impacts arising from the development as it does not result in unreasonable privacy impacts. There are no significant negative flow-on impacts in terms of view loss, overshadowing or streetscape impacts.

Additionally, there is a lack of significant adverse amenity impacts arising from the development as it does not result in unreasonable privacy or overshadowing impacts. The built form complies with the requirements under the RLEP 2012 and RDCP.

Section 8 Conclusion

This written request to vary the development standard has been prepared in accordance with cl4.6 of the RLEP and demonstrates that strict compliance with the **FSR** development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant planning objectives of the development standard and is consistent with the relevant objectives of the R3 Medium Density Residential zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposal will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no significant adverse impacts on the Chester Avenue streetscape.

In addition, this written request outlines sufficient environmental planning grounds to justify the minimum width and site area development standard including:

- There is a lack of adverse environmental amenity impacts such as privacy loss, view loss and overshadowing.
- The proposal results in improved residential amenity for occupants of the building.
- There is no adverse impact on the residential character of Chester Avenue.
- The variation would affect those lands captured by the LMR zoned R3 whilst all other lands outside the LMR mapped area will not be required to comply with the more restrictive FSR control. This in itself is sufficient reason to vary the control because the sites that are affected are those sites or areas which have better access to services and facility and public transport. It makes no planning sense to apply a more restrictive control to an area that is better placed to take advantage of access to services and transport and then allow R3 zoned land in all other areas to develop under the RLEP provisions. This is antipathetic to the sole purpose of Chapter 6 of SEPP 2021 which is to incentivise residential development.

A handwritten signature in black ink that reads 'Andrew Martin'.

Andrew Martin
Director
Andrew Martin Planning Pty Ltd





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ANNEXURE A - Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. There is no provision in IWLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH").

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J* identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

- (1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*





(4) *The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),*

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed those matters."

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *Rebel/MH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

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2. Variation to Minimum Lot Size and Frontage Width Development Standards under Sections 172(3)(a)&(b) and 173(3)(b)&(d) of the Housing SEPP 2021**D6/26****CLAUSE 4.6 REQUEST TO VARY****Section 172(3)(a)(b) and S173(3)(b)
and (d) of SEPP 2021
(SITE PLANNING DEVELOPMENT
STANDARDS)**

**4 Chester Avenue,
Maroubra**

NOVEMBER 2025 (S8.2)





Section 1 Introduction

- This is a request to vary the relevant non-discretionary development standards for construction of multi-dwelling housing under **Section 172(3)(a)(b)** and **S173(3)(b) and (d) of SEPP 2021** being non-discretionary *development standards* relating to site planning. The clauses have been grouped as requested by Council.
- The subject site is legally described as Lot 3 in DP 7276264 4 Chester Avenue, Maroubra. The site is rectangular in shape and has a total area according to title of 496.2m².
- The non-discretionary *development standards* are as follows:
 - Minimum lot size of 500sqm - S172(3)(a)
 - A minimum lot width at the front building line of 18m - S172(3)(b)
 - Each resultant lot must be 6m wide at the front building line - S173(3)(b)
 - Each resultant lot must have an area of at least 165sqm -S173(3)(d)
- A separate clause 4.6 is provided in relation to the maximum FSR of 0.7:1 under S172(3)(d) noting that the Randwick LEP 2012 provides a 0.75:1 FSR
- The proposal has a lot size of 496.2m², lot widths of 5.165m, 4.205m and 5.165m and FSR of 0.75:1, building height of less than 9.5m and one parking space per dwelling. The proposal complies with the RLEP 2012 development standards however the recent provisions of the SEPP 2021 and specifically Chapter 6 Low and Mid Rise Housing (herein 'LMR') applies in accordance with Council. The applicant has opted to address the Council's advice by preparing the Clause 4.6 variations for abundant precaution even though these standards are non discretionary standards.
- The subject application is not typical in that the LMR under SEPP 2021 housing provisions prescribe more onerous controls than the current RLEP provisions which is odd in that the strategic planning intent of the LMR is to incentivise development which is confirmed in Section 162 of the SEPP 2021 which relevantly provides:

"162 Aim of chapter

The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport."

- As advised by Council the relevant non-discretionary development standards are *development standards* for the purposes of the *EP&A Act 1979*. Clause 4.6 recognises *development standards* which are relevant under the RLEP as well as *any other environmental planning instrument* meaning the SEPP (Housing) 2021.
- This request to vary the Housing SEPP non-discretionary development standards considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2)*.
- Further the case law establishes that the future character informed by SEPP 2021 can be considered when dealing with variations (see *Big Property Pty Ltd v Randwick City Council [2021]* (Big Property), followed swiftly by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021]* (HPG).) and therefore Council should have regard to the subdivision patterns that will prevail from the SEPP 2021. The proposed subdivision pattern and arrangement are compatible with the compliant forms promoted under the SEPP 2021.
- The objective of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).





- There are sufficient environmental planning grounds to warrant a variation of the development standards in this particular instance. Strict compliance with the SEPP 2021 would thwart the achievement of the objectives set out under Chapter 6 LMR of SEPP 2021 as well as the objectives of the zone.
- The relevant plans relied upon are those identified as the plans prepared by Bryan Design submitted with the subject S8.2 Review of Determination. The S8.2 scheme incorporates a range of changes to the design to address the reasons for refusal. The primary changes are designed to reduce the intensity of development on the site and improve intra site amenity for residents by improved solar access and air flow.

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Section 2 Site and proposed development

2.1 Subject site

The site known as 4 Chester Avenue, Maroubra and legally described as Lot 3, DP 727626. The site is rectangular in shape and has a total area according to title of 496.2m². It is located on the eastern side of Chester Avenue, being the second property south of the intersection of Chester Avenue and Fitzgerald Avenue.

The site contains a number of mature trees and domestic plants – front and rear of the existing dwelling.

Existing on the site is a two storey, single dwelling. Vehicular access is via single crossover and driveway to the site. There are three street trees within the extent of the front boundary line.

An aerial view of the site is presented in Figure 1 below.

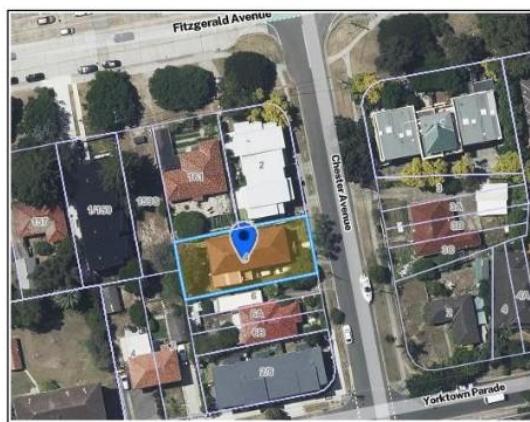


Figure 1: Aerial view of the site



Figure 2: View of the site from Chester Avenue





2.2 Proposed development

The proposal involves the demolition of site structures and construction of three (3) attached dwellings, tree removal, landscaping, drainage, driveways and torrens title subdivision.

The proposal comprises three attached dwellings (townhouses), each on their own lot, comprising 2 x 3 bedroom + study and 1 x 2-bedroom + study dwellings. Each dwelling is to have an integrated single garage and space for parking on the driveway.

The application includes new driveways for each lot, landscaping and drainage. The development is to be subdivided into three (3) torrens title allotments.

Proposed lot sizes: Lot 1: 176.31m²; Lot 2: 143.54m² & Lot 3: 176.31m²

Lot widths: 5.165m, 4.205m, 5.165m.

FSR: 0.75:1



Fig A: Site/Roof Plan



Fig B: Streetscape Elevation



Section 3 Planning instrument, development standard and proposed variation

3.1 Variation to development standard

The relevant sections of the Housing SEPP to be varied is **Section 172(3)(a)(b)** and **S173(3)(b) and (d) of SEPP 2021**.

This Section relates to the non-discretionary development standards for multi-dwelling housing as they relate to suite planning.

Section 172(3)(a) and (b) relevantly provides

The relevant section of the Housing SEPP to be varied is **Section 172(3)(a) and (b)**. This Section relates to the non-discretionary development standards for multi-dwelling housing. Section **172(3)(a) and (b)** relevantly provides.

172 Non-discretionary development standards—multi dwelling housing

- (1) *This section applies to development for the purposes of multi dwelling housing on land in a low and mid rise housing area in the following zones—*
 - ...
 - (c) *Zone R3 Medium Density Residential,*
 - ...
- (3) *The following non-discretionary development standards apply in relation to development for the purposes of multi dwelling housing (terraces)—*
 - (a) *a minimum lot size of 500m²,*
 - (b) *a minimum lot width at the front building line of 18m,*
 - (c) *if no environmental planning instrument or development control plan that applies to the land specifies a maximum number of car parking spaces per dwelling—a minimum of 0.5 car parking spaces per dwelling,*
 - (d) *a maximum floor space ratio of 0.7:1,*
 - (e) *a maximum building height of 9.5m. (our emphasis)*

REQUESTED VARIATIONS

Clause 172 (3) (a) - a minimum lot size of 500m²

Lot size required is **500sqm**: Site area **496.2m²** (see Fig 5)

Variation = **3.8m² or 0.76%**.



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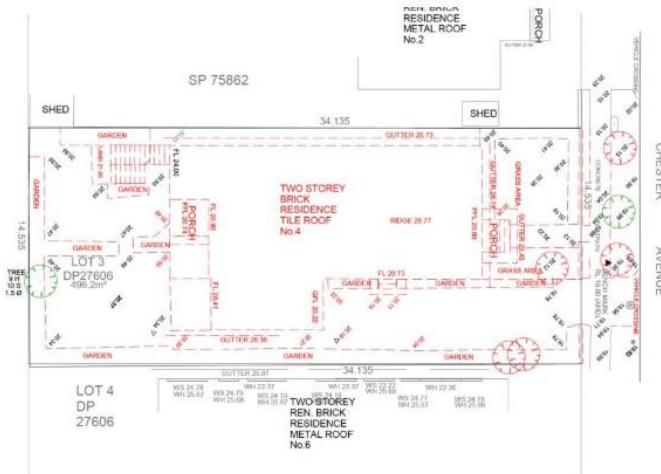


Figure 3: Site plan showing 496.2sqm from the survey

Clause 172 (3) (b) - a minimum lot width at the front building line of 18m,

1. Lot width required 18m: Proposed is 14.535m. Variation = 5.465m or 30.36%

Proposed Plan showing the current lot width provided below in Figure 6):

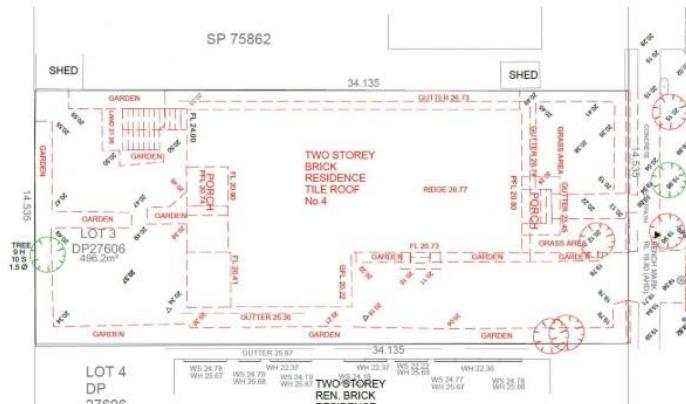


Figure 4: Overall lot width of parent lot 14.535m - as shown on survey





Section 173(3)(b) and (d) relevantly provides.

173 Non-discretionary development standards— subdivision for multi dwelling housing (terraces)

(1) This section applies to development involving subdivision for the purposes of multi dwelling housing (terraces) on land in a low and mid rise housing area in the following zones—

...
(c) Zone R3 Medium Density Residential,
...

(3) The following non-discretionary development standards apply—
 (a) each resulting lot must contain no more than 1 dwelling,
 (b) **each resulting lot must be 6m wide at the front building line,**
 (c) each resulting lot must have lawful access and frontage to a public road,
 (d) **each resulting lot must have an area of at least 165m². (our emphasis)**

REQUESTED VARIATIONS

Section 173(3)(b) each resulting lot must be 6m wide at the front building line

Lot widths: less than 6m

Variation proposed to Lots 1 - 3.

Lot 1 – 5.165m. Variation is 835mm or 13.91%
 Lot 2 – 4.205m Variation is 1.795 or 29.91%
 Lot 3 – 5.165m Variation is 835mm or 13.91%

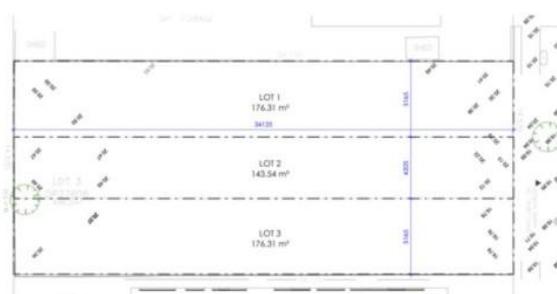


Figure 5: Subdivision plan showing proposed lot widths for each of the 3 proposed Torrens Lots

173(3) (d) each resulting lot must have an area of at least 165m²

Variation proposed – Lot 2 only as Lots 1 and 3 comply.

- Proposed Lot 1 – 176.31m² Complies
- **Proposed Lot 2 – 143.54m² 21.46sqm variation = 13%**
- Proposed Lot 3 – 176.31m² Complies





The proposed subdivision plan is provided below:

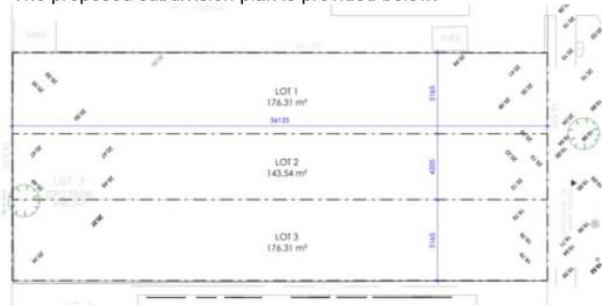


Figure 6: Proposed subdivision plan with Lot sizes for each lot = Lots 1 and 3 comply and Lot 2 at 143.54 is under the 165sqm min lot size control.

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Section 4 Development Standards

A *development standard* is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."* (our emphasis)

Sections 172(3)(a) and (b) and S173(3)(b) and (d) of SEPP 2021 are development standards falling into (a) .

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Section 5 - Clause 4.6 of RLEP 2012

6.1 Clause 4.6 of the **RLEP 2012** provides a legal pathway by which an applicant can vary a *development standard*. Clause 4.6 of **RLEP 2012** relevantly provides as follows:

4.6 Exceptions to development standards

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

Note—

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

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

Response to Clause 4.6 of RLEP 2014

1. Clause 4.6 1(a)(b)

The following provides a response to the Clause 4.6 provisions:





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

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

The purpose of Clause 4.6 of RLEP 2012 is to provide flexibility in the application of development standards.

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

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

Justification within this written request demonstrates that an appropriate degree of flexibility should be applied to this particular application notwithstanding the site planning variations.

2. Clause 4.6 (2)

The following provides a response to relevant Clause 4.6(2) of RLEP 2012. Clause 4.6(2) of RLEP 2012 provides:

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

The site planning development standards are not expressly excluded from the operation of cl4.6 of RLEP 2012 and accordingly, consent may be granted.

2. Clause 4.6 (3)(a) and (b)

Clause 4.6 (3) requires the making of a written request to justify the contravention of a development standard and states as follows:

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

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

The proposed development does not comply with the site planning controls in **Section 172(3)(a) and (b) and S173(3)(b) and (d) of SEPP 2021.**





Strict compliance with **Section 172(3)(a) and (b) and S173(3)(b) and (d) of SEPP 2021** being *development standards* is considered to be '*unreasonable and unnecessary in the circumstances of this case*' as justified in this written variation request.

The intent of the policy is to incentivise development and specifically housing and therefore the controls are actually hindering housing delivery and housing choice being in conflict with more flexible controls under the RLEP.

The relevant justification dealing with **Clause 4.6 (3)(a)** criteria is contained in this written variation request.

This written variation request demonstrates that strict compliance is unreasonable and unnecessary in the circumstances of this case and sufficient environmental planning grounds exist to justify contravening the development standard so as to satisfy **Clause 4.6 (3)(b)** as detailed in this written request.

3. Clause 4.6(6)

Not relevant to this application.

4. Clause 4.6(8)

Not relevant to this application as no BASIX provisions are to be varied.

Clause 4.6(4) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.





Section 6 Compliance is Unreasonable or Unnecessary - Clause 4.6(3)(a)

In dealing with the "unreasonable and unnecessary" we refer to Preston CJ where he identifies and validates at least 5 arguments available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ concluded as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

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

The first way identified in *Wehbe* is to justify this written variation (as set out at 42 of the judgment):

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

This written variation to **Section 172(3)(a) and (b) and S173(3)(b) and (d) of SEPP 2021** relies in the first instance by demonstrating that compliance is *unreasonable and unnecessary* as the objectives of the development standard are achieved notwithstanding a variation to the development standard.

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the controls, it is necessary to identify the purpose of the Housing SEPP Non-discretionary controls and then progress to dealing with the consistency or otherwise with the application of the numerical controls to the proposed development.

The Housing SEPP does not contain any specific development standard objectives for the non-discretionary controls.

Non-discretionary controls within the Housing SEPP 2021 aim to provide certainty and predictability for developers, allowing them to proceed with development if they meet the specified requirements, regardless of the local planning rules.





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In this case, the proposed attached development does not comply with all of the relevant non-discretionary controls for multi-dwelling housing and a variation request is required as the Housing SEPP is an environmental planning instrument containing development standards. In certain (atypical circumstances) there will be some local controls that are in excess of the LMR controls in some local government areas. The target of the LMR control is really local government areas (LGA's) that had retained outdated controls for development in the R3 Medium Density Residential zones or simply had unnecessary highly restrictive controls. However Randwick LGA is not one of those LGA's yet was affected by the blanket LMR controls for the identified town centres under Chapter 6 of the SEPP 2021.

In this instance the RLEP does not require lots resulting from subdivision associated with attached housing to achieve 165sqm. There are numerous lots in the area that have been subdivided post construction of the attached dwellings with lots less than 165sqm.

Through the DA process the Council can be satisfied that each new attached dwelling achieves a suitable level of amenity and streetscape presentation and then allows for the subdivision of that dwelling therefore retaining full control of the built form and intra site and external amenity outcomes. The S8.2 scheme provides improved amenity to residents by reducing the yield and improving internal light penetration.

As requested by Council and in dealing with unreasonable and unnecessary the principles of the policy have been addressed below noting that there are no specific objectives of the standard subject of the variation. Principles of the policy are used to inform the actual strategic targets and therefore some objectives relate to areas which are not targeted by this particular development like short term accommodation for very low to medium income households. Overall the proposed development performs well when assessed against the policy objectives.

3 Principles of Policy

The principles of this Policy are as follows—

Provision of SEPP 2021	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing,	The provision of three attached dwellings adds to the diversity of the local housing supply which is important given the zoning of the land and the strategic location of the site within the designated LMR area. Likely that one or more dwellings will end up in the rental market. Owner occupiers of subject development may well be renting at present that will potentially free up rental housing elsewhere. Objective achieved.
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	Even with compliant development there would be no guarantee that the development of this particular site would provide housing for very low - moderate income households. This objective is targeted to other chapters of the SEPP like retention of affordable housing or those chapters that provide incentives to development of boarding houses and Build to Rent (BTR). Overall objective is not thwarted as significant number of other sites within the locality that could be development





	for very low to moderate income earners. Site is not large enough nor does it have FSR and density to support BTR development needing 50 units or more.
(c) ensuring new housing development provides residents with a reasonable level of amenity,	<p>Reasonable amenity provided to each dwelling in the way of solar access, privacy and outlook. Each dwelling has a well-connected POS outdoor area that is easily accessed directly from the internal living spaces at the ground floor.</p> <p>In terms of amenity the proposal has been designed with all rooms in Unit 1 and 3 having external windows. Unit 1 faces north and will receive ample direct and reflected ambient light and ventilation. Unit 2 is the central unit and has a number of design features added to improve internal amenity with regard to solar access and ventilation. The design of all units now adopts a void that is open to the sky. The front door for 2 of the 3 dwellings is aligned with the rear opening so that air flow can pass through the dwelling. The roof has also been removed over the rear section of dwelling 2 to create a balcony.</p> <p>We note that as set out in the SEE accompanying the S8.2 the amenity of each dwelling is very much consistent with the amenity provided by a compliant NSW Pattern Book design. The void and overall layout and arrangement of the S8.2 scheme (save for the garage and parking for dwelling 2) is consistent with the Pattern Book for east - west orientated lots.</p>
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	Development is ideally located within the defined LMR area under the SEPP 2021 which the State Government has set as being an area that is connected to transport and goods and services.
(e) minimising adverse climate and environmental impacts of new housing development,	The impact of this development with its slab on ground design is consistent with the level of impact anticipated for those uses identified as being permissible in the zone.
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	The overall built form and style of the façade will add vitality to the streetscape. The presentation to the street is overwhelmingly 2 storeys and the roof is contained behind the main façade. The roof gravitates (slopes) away from the front, rear and side boundaries so the perceived visual impact of the roof element is reduced. Wall heights and overall scale is reflective of a 2 storey form. The proposal is compatible with the existing and future form anticipated





	<p>in the area accepting that infill development does not need to be the same to be compatible (see Project Ventures v Pittwater Council).</p> <p>Of note is the fact that sites within 400-800m of the LMR town centre are entitled to a max FSR of 1.5 where residential flat buildings are permissible with consent as in the subject case. There will be sites in the local area that achieve 500sqm and will propose FSRs up to 1.5:1 under Chapter 6 of the Housing SEPP and may also then apply Chapter 2 for an additional 30%FSR and height. The future character will be informed by Chapter 6 and Chapter 2 of the Housing SEPP and in accordance with decisions like Big Property v Randwick and Pavlakos Capital v Canterbury Bankstown Council the future character will be informed by incentivised housing provisions.</p> <p>In support of the proposed S8.2 scheme is the fact that it provides side setbacks to the first 8.1m of the site which can be a zero setback under the Pattern Book. The additional landscaping enhances the visual amenity of the local area.</p>
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	<p>The objectives more relevant to other sections of the SEPP designed to increase short term accommodation. This particular site in this location is well suited to more permanent accommodation and other areas existing within the defined LMR to provide short term offerings.</p>
(h) mitigating the loss of existing affordable rental housing.	No loss of existing affordable housing.

The following deals with the zone objectives:

R3 Medium Density Residential

The objectives of the R3 zone are as follows:

- *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.*

An enquiry is now made in relation to the ability or otherwise to reasonably satisfy the stated objectives of the zone having regard to the variations to the Housing SEPP provisions.

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

The proposal is for the construction of three, new attached dwellings. Each dwelling includes open-plan living and dining, kitchen, laundry, bathroom, and bedrooms (each level) with integrated single garage and parking on the driveway. The site is zoned for the purpose of providing additional housing which is achieved by this proposal. The objective is achieved.

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

The proposal increases the variety of housing types and sizes for the local area. It replaces a single brick dwelling and provides for new attached row house style development with improved landscape outcomes. The objective is achieved.

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

The objective is not relevant to the proposal.

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.

The development provides for architecturally designed dwellings that are consistent with the emerging nature of medium density development in the area and the desired future character of the area. The proposal preserves the regular subdivision pattern and orientation of the lots and siting of dwellings along Chester Avenue. The form and style of the attached dwellings is similar to that of the recently approved developments in the immediate area. The proposed development will contribute to the emerging contemporary townhouse style and density of housing in the neighbourhood. The pattern of subdivision is not that dissimilar to a pattern that would evolve from a strictly compliant development. An applicant is able to consider the outcomes of the SEPP 2021 in dealing with future character (see *Big Property Pty Ltd v Randwick City Council [2021] (Big Property)*, *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG)*). The objective is achieved.

As shown below the immediate locality has been subject to subdivision to narrow lots. The proposal whilst departing from the SEPP 2021 site planning controls will be compatible with the existing and emerging character. There will be future transition to a narrower grain of development. The built form will remain as 2 storeys so that the scale of development does not dominate the openness of the streetscape. When dealing with compatibility of the development (now and in the future) it is acceptable to have regard to the development that will prevail due to the incentivised provisions of SEPP 2021. The area is in transition and will change over time. Only one of the three lots is under the actual minimum lot size.

In accordance with Chapter 6 sites within 400-800m of the LMR town centre are entitled to a max FSR of 1.5 where residential flat buildings are permissible with consent as in the subject case. There will be sites in the local area that achieve 500sqm and will propose





FSRs up to 1.5:1 under Chapter 6 of the Housing SEPP and may also then apply Chapter 2 for an additional 30% FSR and height. The future character will be informed by Chapter 6 and Chapter 2 of the Housing SEPP and in accordance with decisions like *Big Property v Randwick and Pavlakos Capital v Canterbury Bankstown Council* the future character will be informed by incentivised housing provisions.

Overall the proposal will provide an acceptable outcome where the scale and form of the resultant development will be in line with the expected forms foreshadowed within the LMR.



Fig 7 - Aerial view

To protect the amenity of residents

The development has been architecturally designed to address the visual and acoustic privacy of adjoining neighbours via the orientation of windows to the front and rear of the dwellings, screening and separation of outdoor areas, landscaping and beautification of each site.

In terms of amenity the proposal has been designed with all rooms in Unit 1 and 3 having external windows. Unit 1 faces north and will receive ample direct and reflected ambient light and ventilation. Unit 2 is the central unit and has a number of design features added to improve internal amenity with regard to solar access and ventilation. The S8.2 design provides a void to all dwellings to assist with light penetration. The layout of the dwellings is in accordance with the Pattern Book. Below is a comparison between the S8.2 scheme and the Pattern Book:



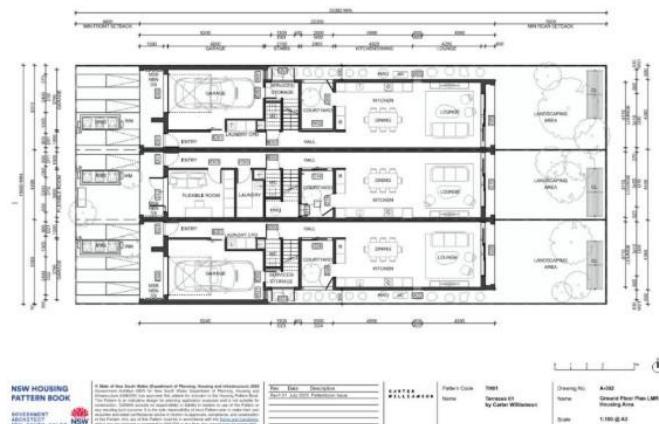


Fig C: Pattern book east - west lots



Fig D: Proposed S8.2A scheme

All rear deck areas face north and will achieve 2.5 hours of solar from 12.30 to 3pm. The size of the dwellings is comparable to 3 and 4 bedroom units in a residential flat building and in this regard 2 hours solar is accepted under the ADG for units. Therefore the solar access to the rear POS and living/dining is seen to be acceptable. Its noted that the ADG permits 15% of the units in all development to face south and those units could potentially have no direct solar access being within the 15% south facing and within the 30% not required to achieve 2 hours. Overall the internal layouts of the dwellings is not convoluted and follows a simple layout so that the best air flow and solar gain is achieved on an east - west layout.

The neighbouring sites are overshadowed to some extent which is a consequence of the east - west orientation and is no greater than what would result from a RLEP compliant height and FSR. The proposed built form does not extend past the rear corner of the neighbouring property. The overshadowing is from a 2 storey development and is no greater than what is typically excepted from infill development. The height and the FSR comply with the RLEP. The neighbours are not exposed to any significant additional impacts because of the variations sought under this application.





The objective is achieved.

To encourage housing affordability

Each dwelling is will marketed to reflect the local housing market values. The level of fitout of each dwelling will not exceed the expectations of the area, ensuring that the new housing remains affordable and relative to the community profile of the area. The objective is achieved.

To enable small-scale business uses in existing commercial buildings

The objective is not relevant to the proposal.

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Section 8 Sufficient Environmental Planning Grounds – Clause 4.6(3)(b)

Clause 4.6 (3)(b) prescribes the following:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Justification provided for the variation applies to this particular application and not to environmental planning grounds that could apply to all lands zoned R3 Medium Density Residential. That is R3 zoned land outside of the LMR affected area will continue to be developed at an increased density as specified under the RLEP.

The variation would affect those lands captured by the LMR zoned R3 Medium Density Residential whilst all other lands outside the LMR mapped area will not be required to comply with the more restrictive controls.

This in itself is a sufficient environmental planning ground to vary the numerical controls for minimum lot size of 500sqm; minimum lot width at the front building line of 18m; minimum 6m wide at the front building line; and minimum 165sqm for each lot.

The site is located in the LMR and has better access to services, facilities and public transport than other similarly zoned land. It makes no planning sense to apply a more restrictive control to an area that is better placed to take advantage of access to services and transport but yet then allow R3 zoned land in all other areas of the LGA to develop under the more favourable RLEP provisions. This is antipathetic to the sole purpose of SEPP 2021 which is to incentivise development. As set out previously there a number of other pre-existing approvals for development in the local area for sites under the minimum 6m width and minimum 165sqm site area that will contribute to the residential character.

The environmental planning grounds justification for the variation is provided as follows:

- Useable living space area is provided for the residents of each dwelling notwithstanding the reduced lot width, lot area and frontage.
- No significant adverse impact by way of privacy, overshadowing, bulk or scale of the development.
- Proposal provides high quality residential accommodation for the occupants and makes best use of the site.
- The proposed development is compatible with the residential character of the area having regard to the surrounding built form and landscape setting.
- Ability to satisfy the zone objectives under the RLEP.
- Design consistent with the NSW Government Pattern Book for east - west orientated sites.
- Enhances the vitality of the Chester Avenue streetscape being compatible with established lot widths in the locality.
- Ability to satisfy the landscaped area objectives under the RDCP.
- The general form of the development has a minimal impact upon the streetscape in terms of siting and the subdivision pattern. There are other recent building and approvals that have occurred where the lot width and size is below the new standards set by Chapter 6 of the Housing SEPP 2021 (see aerial image of lots adjacent and immediately adjoining).





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- The building height and parking provisions area are fully compliant with the Housing SEPP controls.
- The resultant built form arising from the subdivision pattern and lot widths is compatible with the surrounding residential character given other multi dwelling housing.
- The pattern of development is compatible and consistent with the desired character of the locality that will be established by the LMR controls which are very similar to the outcomes achieved by this development.
- There are no significant adverse impacts on the surrounding neighbours noting that a CDC dwelling can be built 900mm from the boundary at 2 storeys and with a part basement.
- The development is consistent with the relevant objectives of the R3 Medium Density Residential Zone.
- Development reasonably satisfies the principles under section 3 of SEPP 2021.
- Allows for the orderly and economic use of the land which is consistent with the EP and A Act 1979 objectives.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to Site Coverage. Clause 1.3 of the EP and A Act 1979 relevantly provides:

"1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,**
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,**
- (c) to promote the orderly and economic use and development of land,**
- (d) to promote the delivery and maintenance of affordable housing,**
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,**
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),**
- (g) to promote good design and amenity of the built environment,**
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,**
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,**
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)**

A development that complies with the land use zoning of the site (R3 Medium Density Residential) satisfies the objectives of under S1.3 EP&A Act 1979.

The architectural plans satisfy the objectives in bold given that:

- The design promotes the orderly and economic use of the site that reasonably preserves amenity and the streetscape character of the area.
- The proposal preserves the environmental amenity of the area providing adequate landscaping and softening of the development when viewed from the public realm.
- Complies with the height and FSR provisions of the RLEP 2012, reflecting the local planning policies and expected density and scale of development by the Council.





- The landscape treatment seeks to soften the built form and reduce potential for adverse amenity, visual and privacy impacts on surrounding land uses.
- There are no significant adverse impacts on the surrounds or immediate neighbourhood.
- The private and public domains at the street boundary will be well defined for safety and security of occupants.
- The development follows the built form, scale and design cues established by recent development approved in the local area.
- The proposal is supported by a BASIX Certificate and undertaking by the developer to minimise the energy needs of each dwelling.
- Achieves the social and economic goals (objective b) set down under the LMR which is to incentivise residential development

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the Housing SEPP variation.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

Additionally, there is a lack of significant adverse amenity impacts arising from the development as it does not result in unreasonable privacy or overshadowing impacts. The built form is set by the assessment under the RLEP and RDCP and therefore the subdivision pattern that follows remains compatible with the Council's strategic planning vision for the R3 zone. There are no significant negative flow-on impacts in terms of view loss or streetscape impacts.

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7 Conclusion

This written request to vary the development standard has been prepared in accordance with c14.6 of the RLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant planning objectives of the development standard and is consistent with the relevant objectives of the R3 Medium Density Residential zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposal will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no significant adverse impacts on the Chester Avenue streetscape.

In addition, this written request outlines sufficient environmental planning grounds to justify the minimum width, subdivision lot size and site area development standard including:

- There is a lack of adverse environmental amenity impacts such as privacy loss, view loss and overshadowing.
- The proposal results in improved residential amenity for occupants of the building.
- Compatible pattern of subdivision having regard to the established pattern in the immediate locality.
- There is no adverse impact on the residential character of Chester Avenue.
- The variation would affect those lands captured by the LMR zoned R3 whilst all other lands outside the LMR mapped area will not be required to comply with the more restrictive controls. This in itself is sufficient reason to vary the control because the sites that are affected are those sites or areas which have better access to services and facility and public transport. It makes no planning sense to apply a more restrictive control to an area that is better placed to take advantage of access to services and transport and then allow R3 zoned land in all other areas to develop under the RLEP provisions. This is antipathetic to the sole purpose of Chapter 6 of SEPP 2021 which is to incentivise residential development.
- The intent of the policy is to incentivise development and specifically housing and therefore the controls are actually hindering housing delivery and housing choice being in conflict with more flexible controls under the RLEP.

A handwritten signature in black ink that reads 'Andrew Martin'.

Andrew Martin
Director
Andrew Martin Planning Pty Ltd





ANNEXURE A - Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in IWLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH").

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J* identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

- (1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(ii)); and*
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and*
- (4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),*





*For the first of the above matters, Preston CJ made it clear, in *Initial Action* at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed those matters."*

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73].)



Appendix 3: Housing SEPP Compliance Table

Standard	Proposal	Compliance
Part 1 'Preliminary'		
164 Land to which chapter applies		
<p>This chapter applies to the whole of the State, other than the following—</p> <p>(b) land identified as a coastal vulnerability area or a coastal wetlands and littoral rainforests area within the meaning of <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>, Chapter 2,</p> <p>(c) land to which Chapter 5 applies,</p> <p>(d) land that is a heritage item or on which a heritage item is located,</p> <p>...</p> <p>(h) land in an ANEF contour of 25 or greater or ANEC contour of 20 or greater,</p>	<p>Council is satisfied that the subject site is not identified within any of the exclusions with section 164 of the SEPP.</p>	<p>Yes, complies</p>

Standard	Proposal	Compliance																
Part 3 'Attached dwellings, multi dwelling housing and multi dwelling housing (terraces)'																		
Division 1 Preliminary																		
170 Development permitted with development consent																		
<p>Development for the purposes of multi dwelling housing or attached dwellings 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.</p>	<p>Proposal is for a multi dwelling housing (terrace) in a low and mid rise housing area in R3 Medium Density Residential.</p>	<p>N/A</p>																
171 Landscaping—multi dwelling housing or multi dwelling housing (terraces)																		
<p>(1) This section applies to development for the purposes of multi dwelling housing or multi dwelling housing (terraces) in a low and mid rise housing area in the Zone R3 Medium Density Residential.</p>	<p>Proposal is for a multi dwelling housing (terrace) in a low and mid rise housing area in R3 Medium Density Residential.</p>	<p>Yes, complies</p>																
<p>(2) Before granting development consent to development to which this section applies, the consent authority must consider the <i>Tree Canopy Guide for Low and Mid Rise Housing</i>, published by the Department in February 2025.</p>	<p>Proposed Lot 1 Deep Soil = 42% Proposed Lot 2 Deep Soil = 27% Proposed Lot 3 Deep Soil = 41% 15% tree canopy coverage not demonstrated.</p>	<p>See Landscaping comments in Appendix 1 for further details</p>																
<p>Table 4. Tree canopy and deep soil – Multi-dwelling (terraces) (applies to each proposed dwelling)</p> <table border="1"> <thead> <tr> <th>Site area</th> <th>Tree canopy (min % site area)</th> <th>Deep soil (min % site area)</th> <th>Tree planting rate</th> </tr> </thead> <tbody> <tr> <td><150 m²</td> <td>15%</td> <td>15%</td> <td>Plant at least one small tree in the deep soil area per dwelling.</td> </tr> <tr> <td>150-300 m²</td> <td>20%</td> <td>20%</td> <td>For every 200 m² of site area or part thereof, plant at least one small tree in the deep soil area.</td> </tr> <tr> <td>>300 m²</td> <td>25%</td> <td>25%</td> <td>For every 225 m² of site area or part thereof, plant at least one medium tree in the deep soil area.</td> </tr> </tbody> </table>			Site area	Tree canopy (min % site area)	Deep soil (min % site area)	Tree planting rate	<150 m ²	15%	15%	Plant at least one small tree in the deep soil area per dwelling.	150-300 m ²	20%	20%	For every 200 m ² of site area or part thereof, plant at least one small tree in the deep soil area.	>300 m ²	25%	25%	For every 225 m ² of site area or part thereof, plant at least one medium tree in the deep soil area.
Site area	Tree canopy (min % site area)	Deep soil (min % site area)	Tree planting rate															
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>300 m ²	25%	25%	For every 225 m ² of site area or part thereof, plant at least one medium tree in the deep soil area.															

*Deep soil definition as per the Guide.

Division 2 Non-discretionary development standards—the Act, s 4.15

172 Non-discretionary development standards—multi dwelling housing

<p>(1) This section applies to development for the purposes of multi dwelling housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential.</p>	<p>Proposal is for a multi dwelling housing (terrace) in a low and mid rise housing area in R3 Medium Density Residential.</p>	<p>Yes, complies</p>
<p>(3) The following non-discretionary development standards apply in relation to development for the purposes of multi dwelling housing (terraces)—</p>		

Standard	Proposal	Compliance
Part 3 'Attached dwellings, multi dwelling housing and multi dwelling housing (terraces)'		
(a) a minimum lot size of 500m ² ,	Proposal = 496.2m ²	No, see Clause 4.6 Assessment.
(b) a minimum lot width at the front building line of 18m,	Proposal = 14.535m	No, see Clause 4.6 Assessment.
(c) if no environmental planning instrument or development control plan that applies to the land specifies a maximum number of car parking spaces per dwelling—a minimum of 0.5 car parking spaces per dwelling,	Part C2 of RDCP includes minimum parking rates for attached dwellings.	N/A
(d) a maximum floor space ratio of 0.7:1,	0.75:1 (372.15m ²)	No, see Clause 4.6 Assessment. Council RLEP FSR control (0.75:1) has been met.
(e) a maximum building height of 9.5m.	9.04m (proposed ridge RL 29.15 above RL 20.11 from survey)	Yes, complies
173 Non-discretionary development standards—subdivision for multi dwelling housing (terraces)		
(1) This section applies to development involving subdivision for the purposes of multi dwelling housing (terraces) on land in a low and mid rise housing area in Zone R3 Medium Density Residential.	Proposal is for a multi dwelling housing (terrace) in a low and mid rise housing area in R3 Medium Density Residential.	Yes, applicable
(2) This section applies only if—		
(a) development consent was granted for the multi dwelling housing (terraces) on or after 28 February 2025, or	N/A – consent not granted.	N/A
(b) the development results from a development application made on or after 28 February 2025 for the subdivision of the land and the erection of multi dwelling housing (terraces) on the land.	Applicable as the development application was made on 28/11/2025 for the subdivision of the land and the erection of multi dwelling housing (terraces) on the land.	Yes, applicable
(3) The following non-discretionary development standards apply—		
(a) each resulting lot must contain no more than 1 dwelling,	1 dwelling per lot.	Yes
(b) each resulting lot must be 6m wide at the front building line,	Lot 1 = 5.165m Lot 2 = 4.205m Lot 3 = 5.165m	No, see Clause 4.6 Assessment.
(c) each resulting lot must have lawful access and frontage to a public road,	Lawful access and frontage proved from Chester Avenue.	Yes
(d) each resulting lot must have an area of at least 165m ² .	Lot 1 = 176.31sqm Lot 2 = 143.54sqm Lot 3 = 176.31sqm	No, see Clause 4.6 Assessment.

Standard	Proposal	Compliance
Part 3 'Attached dwellings, multi dwelling housing and multi dwelling housing (terraces)'		
(4) This section does not apply to strata subdivision.	No strata subdivision proposed.	N/A

Appendix 4: DCP Compliance Table

4.1 Part B4: Landscaping and Biodiversity

Council is satisfied that the proposed development meets the landscape requirements in accordance with Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer in Appendix 1 of this report.

4.2 Part B5: Preservation of Trees and Vegetation

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

4.3 Part B6: Recycling and Waste Management

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

4.4 Part B7: Transport, Traffic, Parking and Access

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

4.5 Part C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2. Site Planning			
2.1	Site Layout Options		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example 	Conventional layout appropriate for the subject site.	Yes, complies
2.2 Landscaped open space and deep soil area			
2.2.1	Landscaped open space		
	ii) For multi dwelling housing and attached dwellings, a minimum of 50% of the site area (248.1m²) is to be landscaped open space. A minimum width of 2m of landscaped open space is to be provided. For attached dwellings, this refers to each allotment individually.	149.24m ² Excludes the first floor planter to Dwelling 2 and areas <2m in width. Whilst no sites comply, Council is satisfied that each site has sufficient area for impermeable surfaces, recreation activities, and landscaped areas.	Acceptable on merit
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (124.05m²) should incorporate deep	186.2m ²	Yes, complies

DCP Clause	Control	Proposal	Compliance
	<p>soil areas sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>(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.</p> <p>(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.</p> <p>(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.</p> <p>(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.</p>	Demonstrated	Yes, complies
2.3	Private and communal open space		
2.3.1	Private open space		
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p> <p>For attached dwellings and multi dwelling housing:</p> <p>(iv) Each dwelling is provided with an area of useable private open space or courtyard area, at ground and/or podium level with minimal or no level changes; and</p> <p>v) A minimum area of 20 square metres of private open space should be provided at ground and/or podium level capable of containing a rectangle with minimum dimensions of 3m x 4m with minimal or no level changes.</p>	<p>Western orientation acceptable.</p> <p>Private on flat land at the rear of the site.</p> <p>Each dwelling has a separate courtyard on ground level.</p> <p>Sufficient area achieved for each dwelling.</p>	Yes, complies
3.	Building Envelope		
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow</p>	<p>First floor balcony aligns with 6 Chester Avenue balcony.</p> <p>N.b. 2 Chester Avenue is a corner lot so not relevant for front setback consideration,</p>	Yes, complies

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DCP Clause	Control	Proposal	Compliance
	<p>(ii) for suitable landscaped areas to building entries.</p> <p>(iii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iv) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(v) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>different controls and lot configuration.</p> <p>Planting provided, however not much and not significant planting.</p>	
3.4.2	Side setback		
	<p>Attached Dwellings</p> <p>i) Attached dwellings should comply with the minimum side setback requirements for dwelling houses and dual occupancies (attached and detached) (see Section C1 Low Density Residential: 3.3.2 Side Setbacks).</p> <p>Notwithstanding the above, side setbacks do not need to comply where they attach to another dwelling within the same development.</p>	<p>900mm side setbacks provided to each side.</p>	<p>No, see Key Issues</p>
3.4.3	Rear setback		
	<p>ii) For attached dwellings, provide a minimum rear setback of 25% of the allotment depth or 8m, whichever is the lesser.</p>	<p>8m rear setback achieved at both levels, aligns to the adjoining attached dwellings to the south at 6-6B Chester Avenue.</p>	<p>Yes, complies</p>
4. Building Design			
4.1	Building façade		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p>	<p>Yes, all dwelling designed to Chester Avenue.</p> <p>Yes, all walls parallel to Chester Avenue.</p> <p>Walls articulated with the inclusion of courtyards bisecting the side facades.</p>	<p>Yes, complies</p>

DCP Clause	Control	Proposal	Compliance
	(vi) Conceal building services and pipes within the balcony slabs.		
4.2	Roof design		
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p>	<p>The proposed hipped roof is acceptable in the street context and will not adversely impact upon solar access or visual amenity.</p> <p>Skylights have been extensively used for dwellings to improve solar access and ventilation.</p>	Yes, complies
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages 	No habitable roof space proposed.	N/A

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DCP Clause	Control	Proposal	Compliance
	showing the front and rear elevations of the development.		
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 = 7m Small areas at 8.2m where courtyards have been proposed to side facades.	Yes, complies
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Proposed = >2.7m to each floor of each dwelling.	Yes, complies
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Dwelling pedestrian and vehicular access clear to Chester Avenue.	Yes, complies
	(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 multi-dwelling housing, 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.	Each dwelling has a separate and clear access from Chester Avenue, with Dwelling 3 having an additional access along the southern side elevation, which will have minimal amenity impacts and supports a greater function and accessibility of the dwelling.	Yes, complies
4.8	Balconies		
	(i) 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.	Each dwelling has a large POS at the rear of each site.	Yes, complies
4.9	Colours, materials and finishes		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.	Council is supportive of the proposed materials and finishes schedule that forms part of the DA.	Acceptable

DCP Clause	Control	Proposal	Compliance
	<p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	<p>The side elevations have incorporated battens and detailing to break up the massing of the building, of which Council is happy in providing a positive design outcome.</p>	
4.12	Earthworks Excavation and backfilling		
	<p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p> <p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the</p>	<p>Minor earthworks are proposed along the site boundaries which will not adversely impact upon the amenity of adjoining neighbours, being burdened upon the existing site.</p>	Acceptable on merit

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DCP Clause	Control	Proposal	Compliance
	<p>(vi) neighbouring properties and the public domain.</p> <p>Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing).</p>		
5. Amenity			
5.1	Solar access and overshadowing		
	<p>Solar access for proposed development</p> <p>(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.</p>		
	<p>Considering the east-west site orientation, dwelling living rooms will receive sufficient solar access in mid-winter in the afternoon to the west. Additional daylight to Dwelling 2 will be provided via a skylight and void.</p> <p>Each POS will receive >3 hours of solar access.</p>		
	<p>Solar access for surrounding development</p> <p>(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>		
5.2	Natural ventilation and energy efficiency		
	<p>(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls</p> <p>(ii) Sun shading devices appropriate to the orientation should be provided for the</p>		
	<p>Dwelling 2 is provided with additional daylight via an internal courtyard. As per DEAP advice, this courtyard is to be increased in size to provide sufficient light and ventilation. Refer to Condition 2.a.</p>		

DCP Clause	Control	Proposal	Compliance
	<p>windows and glazed doors of the building.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.</p>	<p>All dwellings provided with skylights to improve daylight and natural ventilation.</p> <p>All habitable rooms incorporate operable windows to outdoor areas.</p> <p>All dwellings are cross-ventilated.</p> <p>All kitchens are naturally ventilated.</p>	
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	<p>Ground floor windows will be screened by side boundary fencing from overlooking adjoining neighbours.</p> <p>First floor side elevation windows to habitable rooms have sill heights of 1.6m, which will prevent any adverse overlooking impacts.</p> <p>Exceptions are windows to study areas and corridors to unit 1 & unit 3. These will overlook the private open space of No.161 Fitzgerald Avenue and into a bedroom of No.6 Chester Avenue. Condition 2.b. has been imposed to ensure appropriate privacy mitigation measures are in place.</p> <p>Overlooking from the first floor western rear windows and balcony in that the cross-views to the adjoining</p>	Yes, complies subject to condition

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DCP Clause	Control	Proposal	Compliance
		<p>neighbours are minor and restricted via privacy louvres to the outer portion of the windows to Dwellings 1 & 3.</p> <p>The privacy of rear adjoining neighbours will not be adversely impacted in that sufficient separation is provided with an 8m rear setback.</p>	
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate "quiet areas" such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	<p>The design and intensification of the site as 'attached dwellings' is well considered and will not adverse impact upon the acoustic amenity of nearby neighbours.</p>	Yes, complies
5.5	View sharing		
	<ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. 	<p>The proposed development will not adversely impact upon existing view corridors.</p>	Yes, complies
5.6	Safety and security		
	<ul style="list-style-type: none"> (i) Design buildings and spaces for safe and secure access to and within the development. (ii) For multi dwelling housing and attached dwellings, provide direct access between the private garages and the dwellings where possible. (ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks. 	<p>All dwellings provided with direct access via Chester Avenue.</p> <p>Direct access from garages to dwellings provided.</p> <p>Front balconies provide casual surveillance of streetscape.</p> <p>Conditioned.</p>	Yes, complies

DCP Clause	Control	Proposal	Compliance
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.		
6. Car parking and access			
6.1	Location		
	<ul style="list-style-type: none"> (i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available. (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. vi) For attached dwellings, where rear lane or secondary street access is not available, garages may be provided on the primary street elevation of the buildings provided they are: <ul style="list-style-type: none"> (a) Single car width only. (b) Recessed behind the front façade alignment. 	<p>Single access to site via Chester Avenue.</p> <p>Driveways setback 900mm and 2.42m respectively. Minor variation acceptable in streetscape context, sufficient landscaping area provided.</p> <p>Single width garages provided, recessed into the main front building alignment behind the GF porch and 1F balcony.</p>	Yes, complies
6.2	Configuration		
	(ii) For multi dwelling housing, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.	3m wide driveway acceptable within streetscape character.	Yes, complies
6.3	Parking Facilities Forward of Front Façade Alignment		
	i) Where the provision of parking facilities behind the front façade alignment is not feasible (due to absence of rear lane or secondary street access, narrow site width, irregular allotment configuration, or retention of an existing building), parking facilities may be provided forward of the front façade alignment.	Single hardstand to each dwelling, 3m in width with planting in front setback area.	Yes, complies
7. Fencing and Ancillary Development			
7.2	Front Fencing		
	<ul style="list-style-type: none"> (i) The fence must align with the front property boundary or the predominant fence setback line along the street. (ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers. 	<p>Front fence piers on front boundary.</p> <p>Front fencing piers of 1.2m solid height.</p>	Yes, complies Yes, complies
7.3	Side and Rear Fencing		
	(i) The maximum height of side, rear or common boundary fences is limited	None proposed.	N/A

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DCP Clause	Control	Proposal	Compliance
	<p>(ii) to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).</p> <p>(iii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits.</p> <p>(iv) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</p> <p>(iv) Side or common boundary fences must be finished or treated on both sides.</p>		
7.6	Storage		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.	Sufficient storage provided internally within each dwelling.	Yes, complies
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	None provided, but capable of achieving a clothes line.	Yes, complies
	(ii) Provide internal laundry for each dwelling unit.	Provided.	Yes, complies
7.8	Air conditioning units:		
	(i) Avoid installing within window frames. If installed in balconies, screen by suitable balustrades.	None proposed.	Yes, complies
8. Area Specific Controls			
8.1	Coral Sea Park Estate, Maroubra		
	<p>(i) Building materials and external finishes are to be consistent with the dominant themes in the Estate.</p> <p>(ii) Site area and dimensions, particularly width, are of sufficient size to allow and maintain the existing themes of large rear garden areas and open spaces between buildings to continue.</p> <p>(iii) Sites have a minimum frontage of 20 metres for development of more than 2 dwellings.</p> <p>(iv) Open spaces in front of buildings are not fenced off from the street. Where fencing is proposed it is no more than one metre high.</p> <p>(v) Front setbacks of development must consider consistency with the surrounding buildings. Front façade design must consider compatibility with the form, massing and articulation of existing development.</p>	<p>The subject site is located on Chester Avenue which has established a new character.</p> <p>The design, dimensions, setbacks, and materials are in keeping with approved development within the immediate context. The development will not adversely impact upon the character of the Coral Sea Park Estate.</p>	Yes, complies on merit

Appendix 5: Morton Traffic Engineers report

DEPARTMENT APPLICATION
482/2025/REV
Randwick City Council
12/10/2025
Records Received



CARPARK AND DRIVEWAY CERTIFICATION OF A PROPOSED MULTI -DWELLING OCCUPANCY

4 Chester Avenue, Maroubra

Prepared for: Bryan Design

N255176A (Version 1A)

October 2025

Motion Traffic Engineers Pty Ltd
Telephone:
940 33 5888
sydney@motiontraffic.com.au

ACN 600201583



INTRODUCTION

Motion Traffic Engineers was commissioned by Bryan Design to prepare a car park certification of a multi dwelling development at 4 Chester Avenue in Maroubra.

Car parking is provided on ground level with vehicle access and egress via a three-way ramp/driveway that runs off Chester Avenue. Three car spaces are provided for each dwelling in the form of a single space garage.

Entry is forward in and reverse out (or vice versa). Council generally permits the reverse movement for small residential developments on a local road.

Reference is made to AS2890.1 (2004), and Council's Development Control Plan for compliance.

1. DRIVEWAY

The details of the driveway from Chester Avenue into the ground level from the perspective of the inbound movement for description purposes are as follows:

- The driveway located in the south is 2.6 metres wide with a gradient of less than 5 percent
- The driveway located in the north is 3 metres wide with a gradient of less than 5 percent
- The driveway in the centre is 2.8 metres wide with a gradient of less than 5 percent.

2. CAR SPACES

The details of the car parking area are as follows:

- The northern garage opening is 2.56 metres wide, 2.66 metres wide inside and 5.75 metres long
- The centre garage opening is 2.6 metres wide, 2.66 metres wide inside and 5.55 metres long
- The southern garage opening is 2.6 metres wide, 3.86 metres wide inside and 5.7 metres long

3. SWEPT PATHS

A swept turning path analysis is performed using a B85 car with 4.9 metres in length, as set in the Australian Standards to confirm that vehicle movements are adequate.



Swept Paths have been performed for all three car spaces.

All swept paths show adequate manoeuvrability.

The swept paths are provided in the Appendix A of this report.

4. SIGHT DISTANCE

The car driver's vehicle sight distance requirement to enter the external road is stated in Figure 3.2 of AS2890.1.

The sight distance varies according to the speed of the external road. Chester Avenue has a sign-posted speed limit of 50 km/hr.

The minimum vehicle sight distance required is 45 metres. Site measurements showed that the minimum sight distance looking left, and right is met if a driver leaves in a forward manner.

The pedestrian sight distance as set out in Figure 3.3 of AS2890.1 is met if a driver leaves in a forward manner.

5. CONCLUSIONS AND RECOMMENDATIONS

The car parking area and driveway is compliant with Australian Standards and Council's DCP.



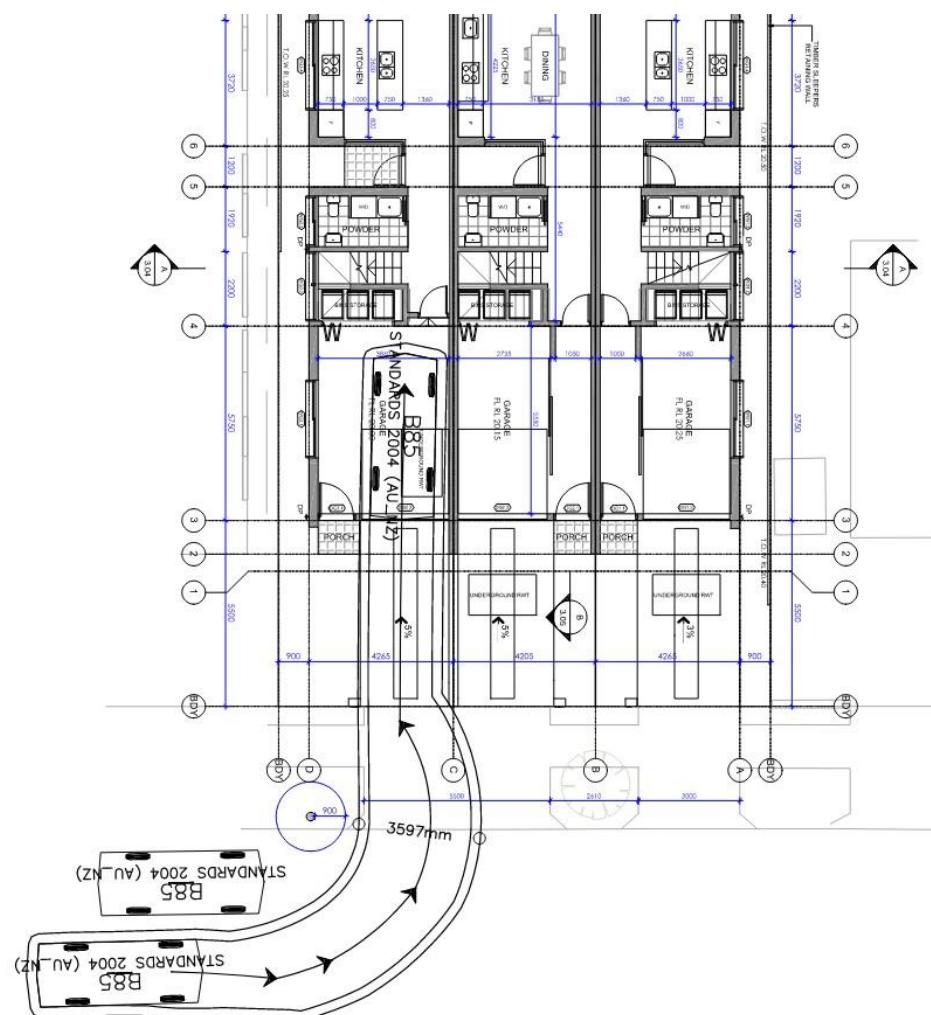
D6/26

APPENDIX A

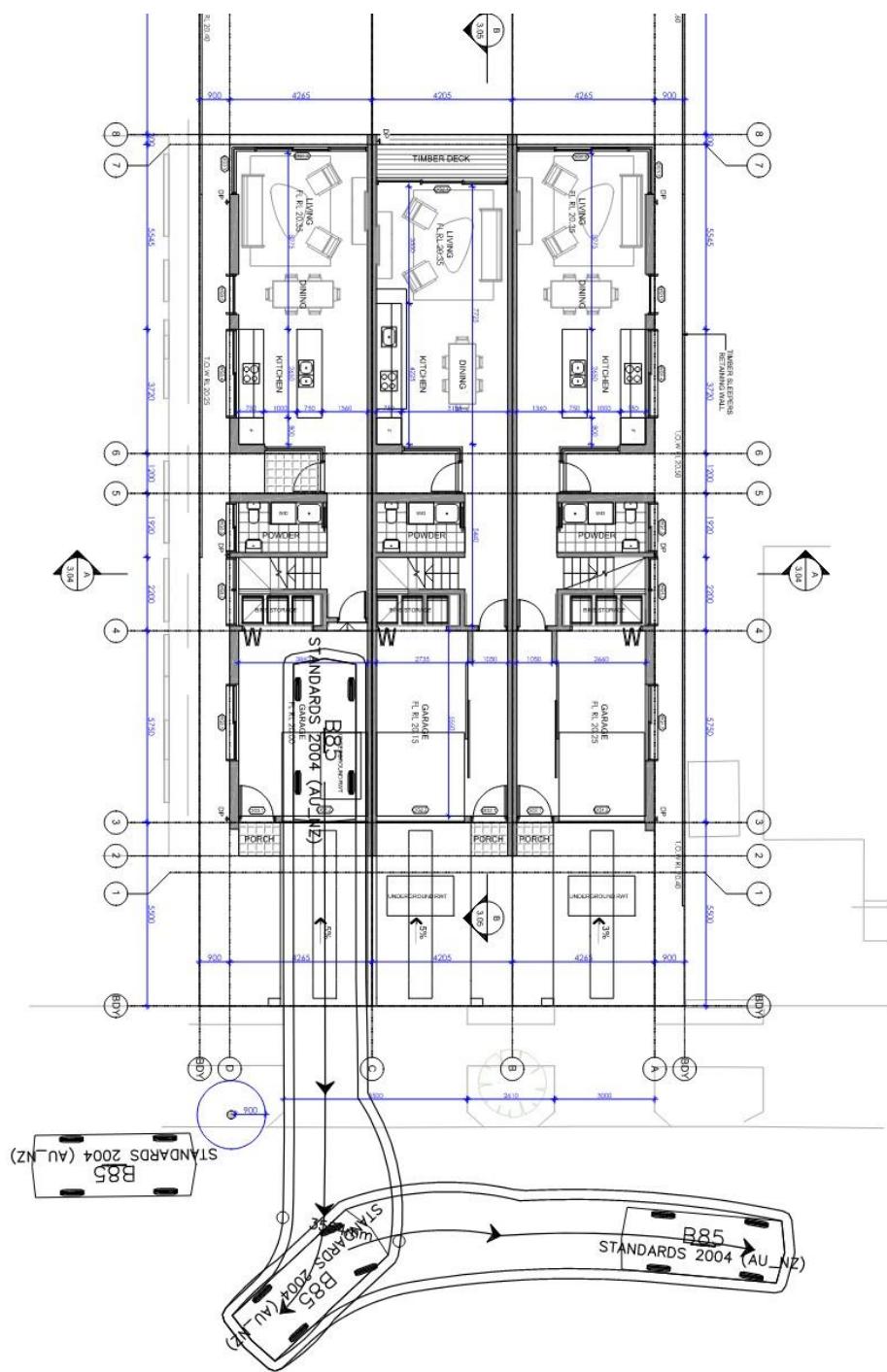
Swept Paths

*Certification of a Proposed Multi Dwelling Development in Maroubra
N255176A Park 1a*

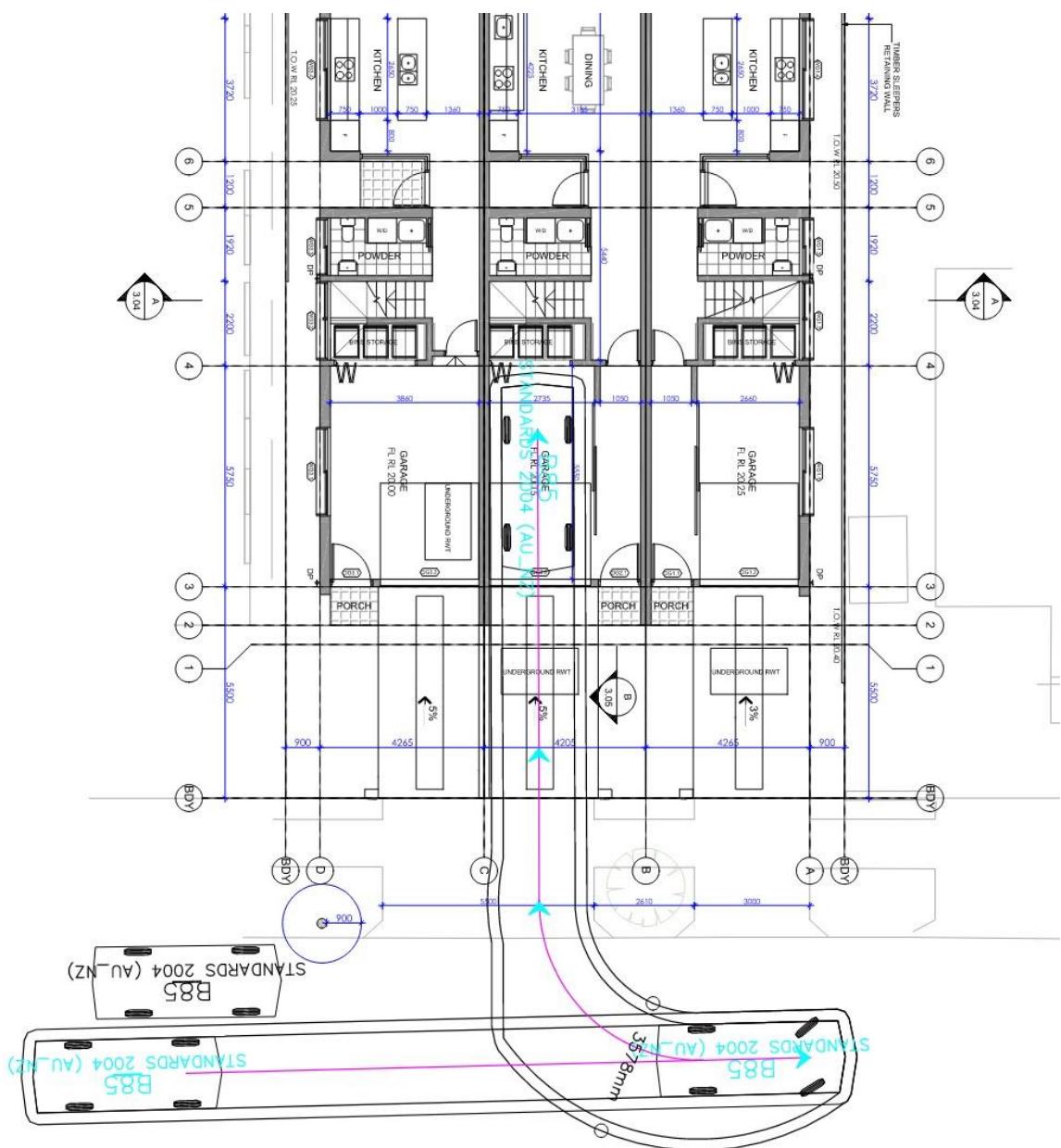
Page 4



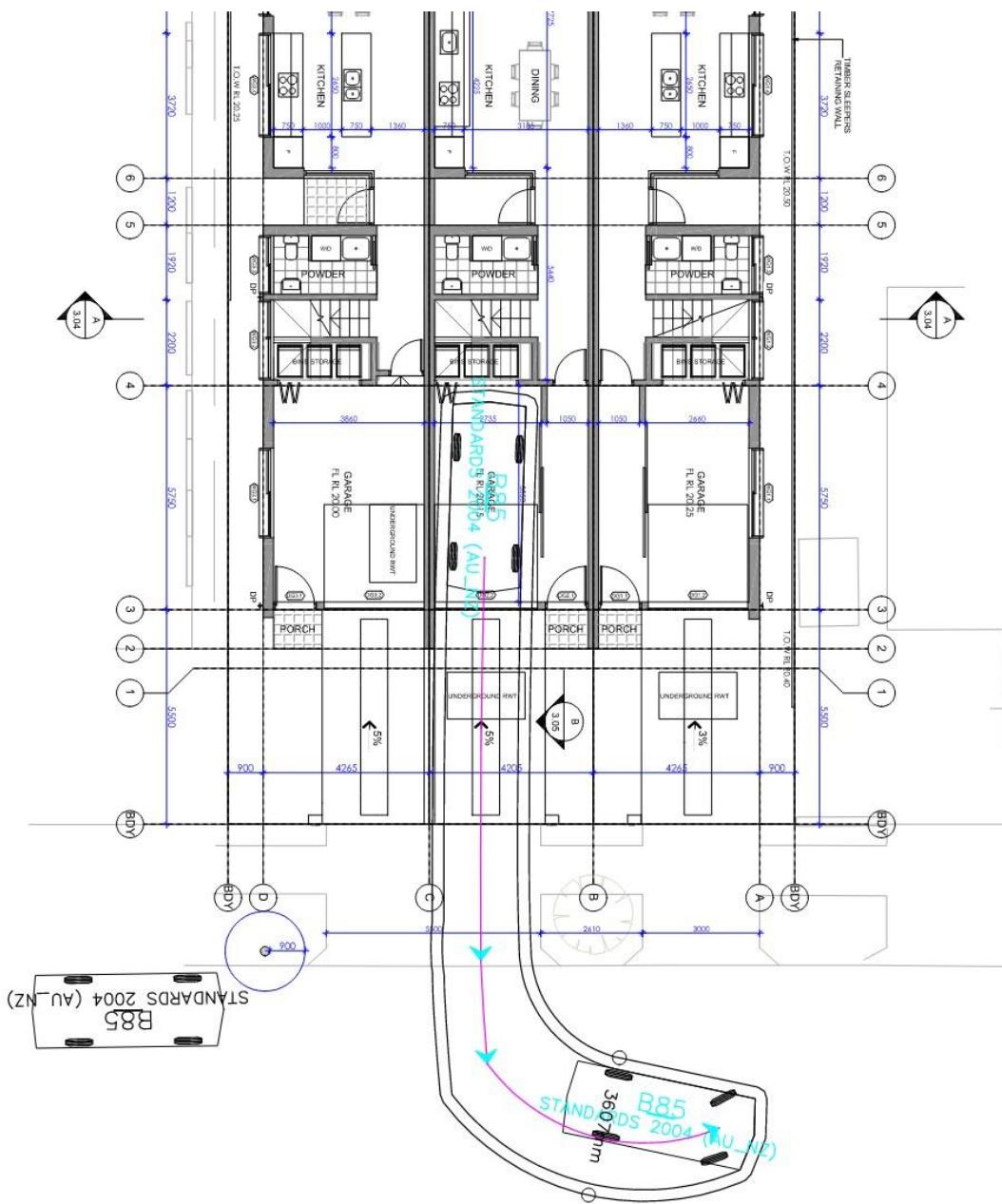
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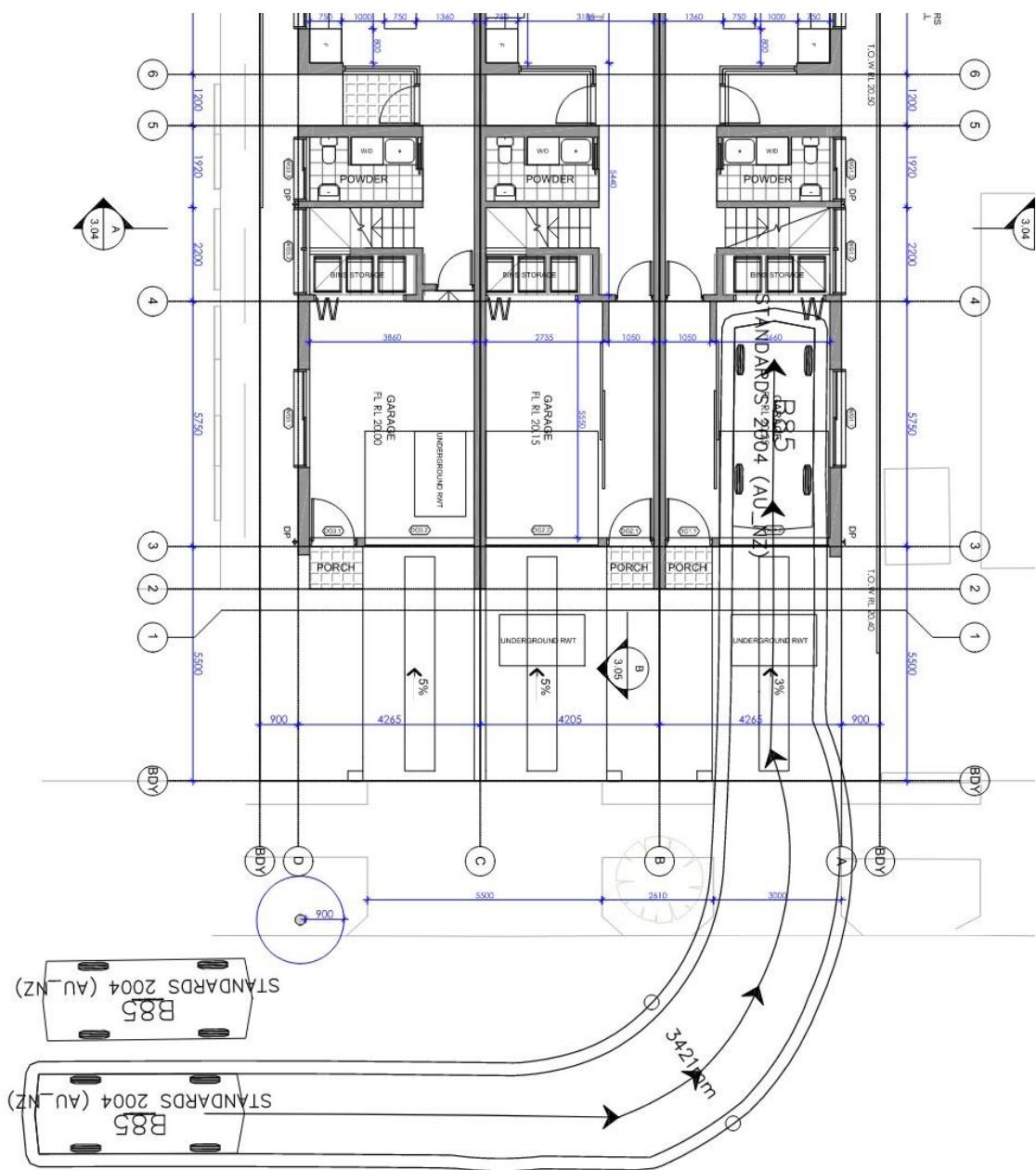


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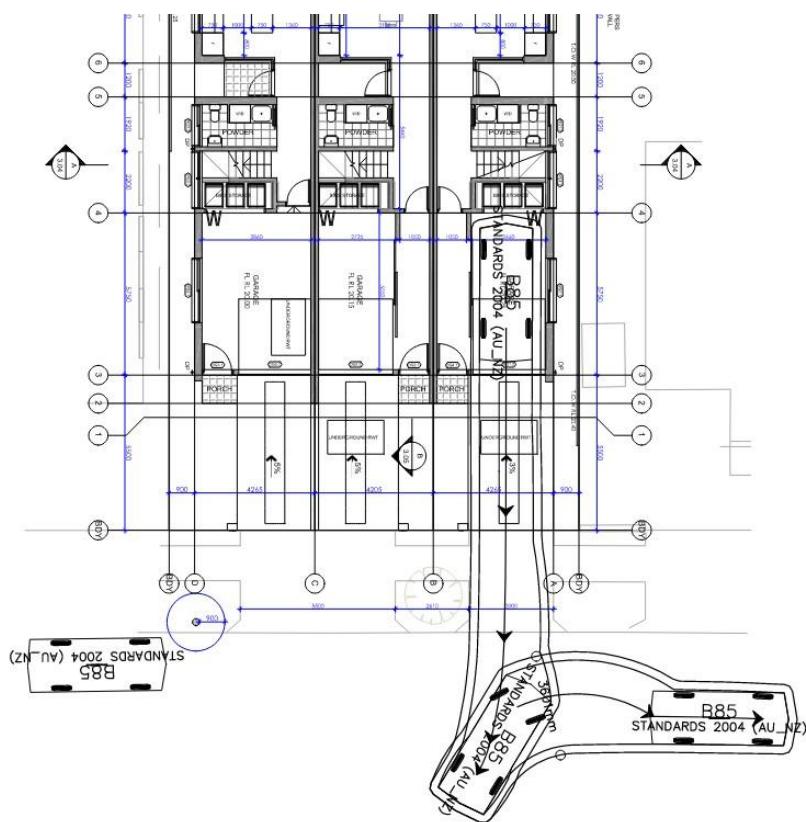


D6/26





D6/26



Responsible officer: Thomas Awford, Environmental Planning Officer

File Reference: DA/482/2025/REV

**Draft Development Consent Conditions
(Medium Density Residential)**



Folder /DA No:	DA/482/2025/REV
Property:	4 Chester Avenue, MAROUBRA NSW 2035
Proposal:	Division 8.2 Review of determination regarding DA/482/2025 for the demolition of existing building/structures, tree removal and construction of a 2-storey townhouse development comprising three (3) dwellings with attic levels, attached garages and timber decks, associated ancillary and landscaping works, and Torrens title subdivision to create three (3) new lots and attached dwellings (Variation to non-discretionary standards: Minimum Lot Size, Minimum Subdivision Lot Size, Minimum Lot Width and Maximum Floor Space Ratio).
Recommendation:	Approval

GENERAL CONDITIONS

Condition																																																											
1. Approved plans and documentation																																																											
Development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:																																																											
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	Condition
	In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.
	Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.
2.	<p>Amendment of Plans & Documentation The approved plans and documents must be amended in accordance with the following requirements:</p> <ol style="list-style-type: none"> The internal courtyard to Unit 2 is to be extended by 1.5m to west with the study above on the 1st floor to be deleted. The living room is also to extend 1.5m to the west to accommodate the larger courtyard and is not to extend beyond the 8m rear setback proposed. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height: <ul style="list-style-type: none"> WF1.4 WF3.4 Front boundary fencing is to be provided with a maximum height of 1.2m (measured from existing ground level), with the solid portion not exceeding 600mm except for piers. The non-solid portion of the fence is to be constructed with lightweight materials (such as timber panels, slats or the like) that are at least 30% open and evenly distributed along the full length of the fence. The pitched/complex roof form shall be amended to a simplified flat or low-pitched roof form. The amended roof design must provide a consolidated, simplified roof profile, improve daylight access, ventilation and amenity to the internal courtyard of Unit 2 and demonstrate practical roof drainage, with rainwater directed away from the internal courtyard and adjoining boundaries. <p>Amended plans are to be submitted to and approved by Council's Manager Development Assessment, in accordance with Section 4.17 of the <i>Environmental Planning and Assessment Act 1979</i>, prior to a Construction Certificate being issued for the development.</p> <p>Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.</p>

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
3.	<p>Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
4.	<p>External Colours, Materials & Finishes The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p>

Condition
Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a Construction Certificate for the development.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

5. **Housing and Productivity Contribution**

Before the issue of the first Construction Certificate, the housing and productivity contribution (HPC) set out in the table below is required to be made.

Housing and productivity contribution	Amount
Housing and productivity contribution (base component)	\$21,624.36
Transport project component	
Total housing and productivity contribution	\$21,624.36

The HPC must be paid using the NSW planning portal.

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

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

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

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

6. **Section 7.12 Development Contributions**

A revised estimated development cost report prepared in accordance with Clause 6 of the EP&A Reg 2021 and by a registered Quantity Surveyor for the approved development shall be submitted and approved by Council's Manager Development Assessment prior to the issue of a Construction Certificate.

The monetary contribution levy as required under Section 7.12 Development Contributions Plan (i.e. 1% of the estimated development cost) shall be based on the final approved amount as per the above.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

Condition
ABS in respect of the quarter ending immediately prior to the date of payment CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.
Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au .
Condition Reason: To ensure relevant contributions are paid.
<p>7. Long Service Levy Payments Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p>
<p>8. Security Deposits The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>:</p> <ul style="list-style-type: none"> • \$5,000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
<p>9. Sydney Water All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p>

Condition
<ul style="list-style-type: none">• Building plan approvals• Connection and disconnection approvals• Diagrams• Trade waste approvals• Pressure information• Water meter installations• Pressure boosting and pump approvals• Change to an existing service or asset, e.g. relocating or moving an asset.

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

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

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

10. **Building Code of Australia**

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

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

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

11. **BASIX Requirements**

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

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.

Condition Reason: Prescribed condition under 75 of the Environmental Planning and Assessment Regulation 2021.

12. **Site stability, Excavation and Construction work**

A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:

- (a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.

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Condition
(b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
(c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
(d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
(e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.

Condition Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.

13. **Design Alignment Levels**

The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:

- **170mm above the top of the kerb at all points opposite the kerb, along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the Council kerb must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6888.

Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.

14. **Design Alignment Levels**

The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$945** calculated at **\$65.00** per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.

15. **Internal Driveway Design**

The gradient of the internal access driveway/s must be designed and constructed in accordance with Australian Standard 2890.1 (2004) – Off Street Car Parking and the levels of the driveways must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.

The height of the building must not be increased to satisfy the required driveway

Condition
gradients.

Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.

16.

Stormwater Drainage

Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier. A copy of the engineering calculations and plans are to be forwarded to Council, if the Council is not the Principal Certifier. The drawings and details shall include the following information:

- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
- b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
- c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
- e) Where buildings abut higher buildings and their roofs are "flashed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
- f) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
- g) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.

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

17.

Stormwater Drainage

The site stormwater drainage system is to be provided in accordance with the following requirements;

- a) The stormwater drainage system must be provided in accordance with the relevant requirements of the Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.
- b) The stormwater must be discharged (by gravity) either:
 - i. Directly to the kerb and gutter in front of the subject site in Chester Avenue,

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Condition
<p>ii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),</p> <p>NOTES:</p> <ul style="list-style-type: none"> • Infiltration will not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the proposed infiltration area, or the ground conditions comprise low permeability soils such as clay. • If the owner/applicant is able to demonstrate to Council that the ground conditions preclude the use of an infiltration system, a pump-out system may be permitted to drain the portion of the site that cannot be discharged by gravity to Council's street drainage system in front of the property. • Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer in accordance with the conditions of this consent and Council's Private Stormwater Code. <p>c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during a 20% AEP (1 in 5 year) storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier.</p> <p>An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an annual exceedance probability (AEP) of 1% (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1% AEP (1 in 100 year) storm.</p> <p>d) Should stormwater be discharged to an infiltration system the following requirements must be met;</p> <ul style="list-style-type: none"> i. Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code. ii. The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system. <p>Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.</p> <ul style="list-style-type: none"> iii. Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure) iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless adjacent to Council land (eg. road, laneway or reserve). <p>e) Determination of the required cumulative storage (in the on-site detention</p>

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and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.
Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.
f) Should a charged system be required to drain any portion of the site, the charged system must be designed such that: <ol style="list-style-type: none"> There are suitable clear-outs/inspection points at pipe bends and junctions. The maximum depth of the charged line does not exceed 1m below the gutter outlet.
g) Generally, all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
h) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.
Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements: <ul style="list-style-type: none"> The base of the pit being located a minimum 300mm under the invert level of the outlet pipe. The pit being constructed from cast in-situ concrete, precast concrete or double brick. A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes. A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent). The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system. A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar). Provision of a sign adjacent to the pit stating, "This sediment/silt arrester pit shall be regularly inspected and cleaned".
<i>Sketch details of a standard sediment/silt arrester pit may be obtained from Council's Development or Drainage Engineer.</i>
i) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
j) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.

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

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	stormwater assets.
18.	<p>Public Utilities A <i>Public Utility Impact Assessment</i> must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.</p> <p>The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.</p> <p>Condition Reason: To ensure relevant utility and service providers' requirements are provided to the certifier and adhered to.</p>
19.	<p>Undergrounding of Site Power Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Chester Avenue. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.</p> <p>Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.</p>
20.	<p>Amended Landscape Plans The Landscape Plans by Monaco Designs dated 31/3/2025 must be amended to now include the following requirements:</p> <ul style="list-style-type: none"> a) A Planting Plan & Plant Schedule which includes proposed species, botanic and common names, pot size at the time of planting, quantity/density, location, dimensions at maturity and any other details required to describe the works b) A predominance of species that can withstand poor quality sandy soils and salt laden winds which are typical of these coastal conditions c) A predominance of species that are not reliant on high quantities of moisture and fertilizer for survival d) A high-quality selection and arrangement of decorative species throughout the front setback so as to assist with presentation of the development to the streetscape e) Dedicated garden areas around the perimeter of the rear yards, to which, evergreen screen planting and decorative lower growing species shall be provided so as to soften the appearance of dividing/boundary fences as well as improve screening and amenity between this site and adjoining neighbours f) 2 x 25 litre (pot size at the time of planting) feature trees within the front setback of the site, comprising one within the northern and southern Lots, selecting a deciduous species which will attain a minimum height of between 3-5 metres at maturity, with all tree planting to be in deep soil and be sited at least 2.5m from any part of the dwelling g) 3 x 45 litre (pot size at the time of planting) native evergreen canopy trees within the rear setback of the site, comprising one centrally along the rear boundary fence within unit 1, 2 & 3, selecting species which will attain a minimum height of 4-7 metres at maturity, with all tree planting to be in

Condition
deep soil and be sited at least 2.5m from any part of the dwelling
h) Provision of a 1.0 metre wide, deep soil garden bed around the perimeter of the rear yard/length of the western common boundary to which, a continuous evergreen hedge shall be planted, using a species which will attain a minimum height of 1.5 metres at maturity.
i) The Amended Landscape Plan must provide additional frontage deep soils along all units, this must align with Architectural Plans Deep Soils by Bryan Long Group, Ground Floor Plan, REV B Dwg 2.01 dated 29/7/2025
A revised scheme complying with the requirements specified above must then be submitted to, and be approved by, the Principal Certifier, prior to any Construction Certificate.
Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.

BEFORE BUILDING WORK COMMENCES

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

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Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

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

23. **Dilapidation Reports**

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

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

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

24. **Construction Noise & Vibration Management Plan**

Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.

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

(a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.

(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.

(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

(d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy

Condition
must be provided to the Principal Certifier and Council prior to commencement of any site works.

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

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

25. **Construction Site Management Plan**

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

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

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

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

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

26. **Construction Site Management Plan**

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

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

27. **Public Liability**

The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

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

28. **Waste Management**

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Condition
A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Lead specialist Strategic Waste prior to commencement of any works on the site.
The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):
<ul style="list-style-type: none"> • The use of the premises and the number and size of occupancies. • The type and quantity of waste to be generated by the development. • Demolition and construction waste, including materials to be re-used or recycled. • Details of the proposed recycling and waste disposal contractors. • Waste storage facilities and equipment. • Access and traffic arrangements. • The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.
<i>Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at; https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf</i>
Condition Reason: To ensure demolition and construction waste is disposed of appropriately and to ensure the completed development will meet Council's requirements for the ongoing management of waste.
<p>29. Construction Traffic Management An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Council's Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Chester Avenue for the duration of the demolition & construction works.</p> <p>The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.</p> <p>The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.</p> <p>Condition Reason: To ensure construction traffic is appropriately managed and there is sufficient on-street space for construction and delivery vehicles as required.</p>
<p>30. Street Tree Management The applicant must submit a payment of \$1790.00 to cover the following costs:</p> <p>a) Being the cost for Council to remove, stump-grind and dispose of three existing street tree specimens of <i>Olea sp</i> (Olive) trees, all three are of little significance, poor vigour and poor health, which are also in direct conflict with works.</p>

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b) Being the cost for Council to supply, plant and maintain 1 x 45 litre Banksia integrifolia street tree at the completion of all works to be plotted within councils Chester Ave verge, directly adjacent the frontage common boundaries of unit 1 & 2.

This fee must be paid into **Tree Amenity Income** at the Cashier on the Ground Floor of the Administrative Centre **prior to a Construction Certificate being issued for the development.**

The applicant must contact Council's Landscape Development Officer on 9093-6633 (quoting the receipt number) and giving at least four working weeks' notice (allow longer for public holidays or extended periods of rain) to arrange for removal of the street tree prior to the commencement of site works, as well as upon completion, to arrange for planting of the replacement street tree.

After this, any further enquiries regarding scheduling/timing or completion of works are to be directed to Council's South Area Tree Preservation & Maintenance Coordinator on 9093-6687.

Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

DURING BUILDING WORK

Condition

31. Site Signage

It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
- c) stating that unauthorised entry to the work site is prohibited.

The sign must be—

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

This section does not apply in relation to—

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

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

32. Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work,	• Monday to Friday - 7.00am to

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including site deliveries (except as detailed below)	5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	• Monday to Friday - 8.00am to 3.00pm • (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

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

33.

Noise & Vibration

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

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

34.

Construction Site Management

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

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

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

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

Notes:

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

Condition
Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.
35. Public Safety & Site Management Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times: <ul style="list-style-type: none">a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time. <i>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.</i>
<ul style="list-style-type: none">h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer

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Condition
on 9093 6691 for further details.

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

36. **Dust Control**

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

Dust control measures and practices may include:

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

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

37. **Site Accessway**

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

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

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

38. **Excavations and Support of Adjoining Land**

In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 74 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

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

39. **Complaints Register**

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

Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.

Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.

Condition
Condition reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.
40. Building Encroachments There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place. Condition Reason: To ensure no encroachment onto public land and to protect Council land.
41. Survey Report A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building: <ul style="list-style-type: none">• prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,• prior to construction (pouring of concrete) of new floor levels,• prior to issuing an Occupation Certificate, and• as otherwise may be required by the Principal Certifier. The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council. Condition Reason: To ensure compliance with approved plans.
42. Drainage Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier. The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter. Condition Reason: To control and manage stormwater run-off during construction so as not to adversely impact neighbouring properties and Council's stormwater assets.
43. Tree Management Approval is granted for the removal of the trees listed below, subject to the planting of 3 x 45 litre (pot size at the time of planting) native evergreen canopy trees within the rear setback of the site, comprising one centrally along the rear boundary fence within each individual unit, selecting a species which will attain a minimum height of 5-7 metres at maturity, with all tree planting to be in deep soil and be sited at least 2.5m from any part of the dwelling. The following trees are consented to be removed: <ol style="list-style-type: none">a) <i>Yucca species</i> and <i>Strelitzia species</i> within the front setback area.b) The small insignificant <i>Camelia species</i> and mature <i>Cotenaster species</i> to the southern side setback.c) Semi-mature <i>Bottlebrush species</i> along the southern side setback.d) Mature <i>Jacaranda mimosifolia</i> (Jacaranda) 10 metres high, within the rear setback area. Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

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BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
44.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
45.	<p>BASIX Requirements</p> <p>In accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.</p> <p>Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.</p> <p>Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.</p>
46.	<p>Post-Construction Dilapidation Report</p> <p>A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.</p> <p>The dilapidation report shall detail whether:</p> <ul style="list-style-type: none"> (a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and (b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent. <p>The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.</p> <p>Condition Reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
47.	<p>Structural Certification</p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i>. A copy of which is to be provided to Council.</p> <p>Condition Reason: To ensure the structural adequacy of the building and works.</p>
48.	<p>Sydney Water Certification</p> <p>A <i>section 73 Compliance Certificate</i>, under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation. An Application for a Section 73</p>

Condition
<p>Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.</p>
<p>Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.</p>
<p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.</p>
<p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
<p>49. Noise Control Requirements & Certification The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i>. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the <i>Protection of the Environment Operations Act 1997</i>, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent. A copy of the report must be provided to the <i>Principal Certifier</i> and Council prior to an occupation certificate being issued. Condition Reason: To protect the amenity of the surrounding area and residents.</p>
<p>50. Street and/or Sub-Address Numbering Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council. If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate. <i>Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.</i> Condition Reason: To ensure properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.</p>
<p>51. Council's Infrastructure, Vehicular Crossings & Road Openings Prior to the issuing of an occupation certificate the applicant must meet the full cost for a Council approved contractor to:</p> <ul style="list-style-type: none">a) Construct a 5.50m wide and a 3.00m wide concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, to Council's specifications and requirements.b) Remove the redundant concrete vehicular crossing and layback.c) Reconstruct a 1.3m wide concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.

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	Condition
	Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
52.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p>
	Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
53.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:</p> <ol style="list-style-type: none"> Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval. The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.
	Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
54.	<p>Council's Infrastructure, Vehicular Crossings & Road Openings</p> <p>The nature-strip upon Council's footway shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.</p>
	Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
55.	<p>Sydney Water</p> <p>A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing</p>

Condition
Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

Condition Reason: To ensure the development satisfies Sydney Water requirements with regards to any upgrade/adjustment of Sydney Water's assets.

56.

Undergrounding of Power

The Principal Certifier shall ensure that all power supply to the development site has been provided as an underground (UGOH) connection from the nearest main pole in Chester Avenue, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. Any private poles must be removed prior to the issuing of an occupation certificate.

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

57.

Stormwater Drainage

A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration/pump-out system is maintained and that no works which could affect the design function of the detention/infiltration/pump-out system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a) The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
- c) Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.

Condition Reason: To ensure stormwater run-off is effectively managed for the life of the development.

58.

Stormwater Drainage

A Works-As-Executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

- Finished site contours at 0.2 metre intervals;
- The location of any detention basins/tanks with finished surface/invert levels;
- Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
- Volume of storage available in any detention areas;
- The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
- Details of any infiltration/absorption systems; and
- Details of any pumping systems installed (including wet well volumes).

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	Condition
	Condition Reason: To control and manage stormwater run-off so as not to adversely impact the development, neighbouring properties and Council's stormwater assets.
59.	<p>Stormwater Drainage</p> <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To control and manage stormwater run-off so as not to adversely impact the development, neighbouring properties and Council's stormwater assets.</p>
60.	<p>Waste Management</p> <p>The owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services to the additional premises.</p> <p>Condition Reason: To facilitate the commencement of Council waste collection services to the completed dwellings.</p>
61.	<p>Subdivision Certificate/Registration of Plans</p> <p>A subdivision certificate in respect to the 2-lot subdivision must be issued and subdivision plans registered at NSW Land Registry Services prior to the issuing of a full occupation certificate for this development.</p> <p>Condition Reason: To ensure a separate approval is obtained for approval of the subdivision plan and to ensure compliance with relevant legislative requirements.</p>
62.	<p>Amended Landscaping Certification</p> <p>Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Amended Landscape Plans by Monaco Designs dated 31/3/2025.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>
63.	<p>Landscaping Strategies</p> <p>Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>

OCCUPATION AND ONGOING USE

	Condition
64. Use of Parking Spaces	<p>The car spaces within the development are for the exclusive use of the occupants of each respective dwelling. The car spaces must not be leased to any person/company that is not an occupant of the building.</p> <p>Condition Reason: To ensure that adequate parking facilities to service the development are provided on site, and to prevent leasing out of car spaces to non-residents.</p>
65. Residential Parking Permits	<p>All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.</p> <p>Condition Reason: To ensure the proposed development relies on its off-street parking spaces and alleviates parking load on Council's streets and roads.</p>
66. Stormwater System	<p>The site stormwater system must be regularly cleaned and maintained to ensure it operates as required by the design.</p> <p>Condition Reason: To ensure that the site stormwater system operates as required by the design.</p>
67. External Lighting	<p>External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

	Condition
68. Demolition Work	<p>A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:</p> <ol style="list-style-type: none">Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.The Demolition Work Plan must include the following details (as applicable):<ul style="list-style-type: none">The name, address, contact details and licence number of the Demolisher /Asbestos Removal ContractorDetails of hazardous materials in the building (including materials containing asbestos)Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)Measures and processes to be implemented to ensure the health & safety of workers and communityMeasures to be implemented to minimise any airborne dust and asbestosMethods and location of disposal of any hazardous materials (including asbestos)

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Condition
<ul style="list-style-type: none"> • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish.

The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.

Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.

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

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

DURING DEMOLITION WORK

Condition
<p>69. Demolition Work and Removal of Asbestos Materials</p> <p>Demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a <i>demolition work plan</i>, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the <i>Protection of the Environment Operations Act 1997</i> and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works, • Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

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

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

LAND SUBDIVISION
BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Condition
70. Completion of Dwellings The approved dwellings must be substantially completed (i.e. minimum 'lock-up stage') and be consistent with the development consent to the satisfaction of the Principal Certifier for the development prior to the issue of a Subdivision Certificate and written confirmation shall be provided to the Council prior to the issue of the Subdivision Certificate.
Condition Reason: To ensure that the development is completed to an acceptable standard prior to registration.
71. Sydney Water A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC). Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water. A Section 73 Compliance Certificate must be completed before a subdivision certificate or occupation certificate can be issued, whichever the sooner. Condition Reason: To ensure the requirements of Sydney Water are met.
72. Easements The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres. Condition Reason: To ensure the creation and registration of legal entitlements and access with the subdivision, as required by the relevant development consents, and proper management of land.
73. Public Utilities The applicant must meet the full cost for telecommunication companies, Jemena, Ausgrid and Sydney Water to adjust/relocate their services as required. This may include (but not necessarily be limited to) relocating/installing new service lines and providing new meters. The applicant must make the necessary arrangements with the service authorities. Condition Reason: To ensure relevant utility and service providers' requirements are adhered to.
74. Restriction and Positive Covenant A "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of subdivision for this property, to ensure that the onsite detention system is maintained and that no works which could affect the design function of the detention system are

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Condition
undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a) The "restriction as to user" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
- c) The Positive Covenant and Restriction may also be registered on the property using standard forms 13PC and 13RPA available from NSW Land registry services under Sec 88E of the Conveyancing Act prior to an occupation certificate being issued.

Condition Reason: To ensure stormwater run-off is effectively managed for the two lots for the life of the development.

75.

Subdivision Certificate

A formal application for a subdivision certificate is required to be submitted to and approved by the Council and all conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.

Condition Reason: To ensure a separate approval is obtained for approval of the subdivision plan and to ensure compliance with relevant legislative requirements.