BUSINESS PAPER

Randwick Local Planning Panel (Electronic) Meeting

Thursday 14 May 2026

Randwick City Council
a sense of community

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Randwick City Council
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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, 14 May 2026

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D25/26

Subject: 34 Mermaid Avenue, Maroubra (DA/189/2026)

D25/26

Executive Summary

Application:	Demolition of existing building/structures and construction of a 3-storey dwelling house with basement level comprising car parking, storage and plant rooms and foyer, installation of swimming pool within front setback, associated excavation, ancillary and landscaping works.
Ward:	Central Ward
Applicant:	EMK Architects Pty Ltd
Owner:	Mr N K & Mrs A M K
Cost of works:	$3,320,981
Reason for referral:	The development contravenes the development standard for height by more than 10%.

Recommendation

A. That the RLPP is satisfied that the applicant's written requests to vary the development standard relating to Height of Buildings in Clause 4.3 of Randwick Local Environmental Plan 2012 have demonstrated that:

   i. Compliance with the relevant development standard is unreasonable and 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. 189/2026 for Demolition of existing building/structures and construction of a 3-storey dwelling house with basement level comprising car parking, storage and plant rooms and foyer, installation of swimming pool within front setback, associated excavation, ancillary and landscaping works at No 34 Mermaid Avenue, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.⇩ RLPP Dev Consent Conditions (general) - DA/189/2026 - 34 Mermaid Avenue, MAROUBRA NSW 2035 - DEV - Emk Architects Pty Ltd

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Subject Site

Submissions received

North

Locality Plan

1. Executive summary

This Report will assess DA/189/2026 (*the Application)* for 34 Mermaid Avenue, Maroubra (*the Subject Site)* against the relevant heads of consideration under Section 4.15 of *Environmental Planning & Assessment Act 1979.*

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

The Application seeks consent for demolition of the existing dwelling house and construction of a new four storey dwelling house. In detail the following is sought:

Basement
- 7.63 metres excavation;
- Basement storage, parking, turntable, and plant;

Lower ground floor
- Loung room, plant, cellar/storage, and laundry;
- External terrace and pool with screening front landscaping;

Ground floor

- Living, dining, lounge, guestroom and sanitary facilities.
- Front balcony and rear covered alfresco;

First floor

- First floor w/ master bed and two bedrooms. Each to have WIR/ensuite;

Roof

- Solar panels / skylights



Figure 1 - 3D render of Application (source: EMK Architects)

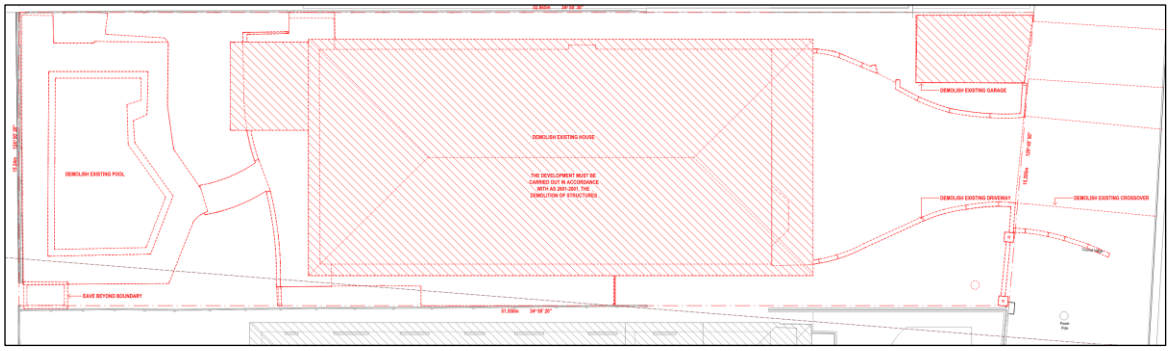


Figure 2 – Proposed demolition (source: EMK Architects)

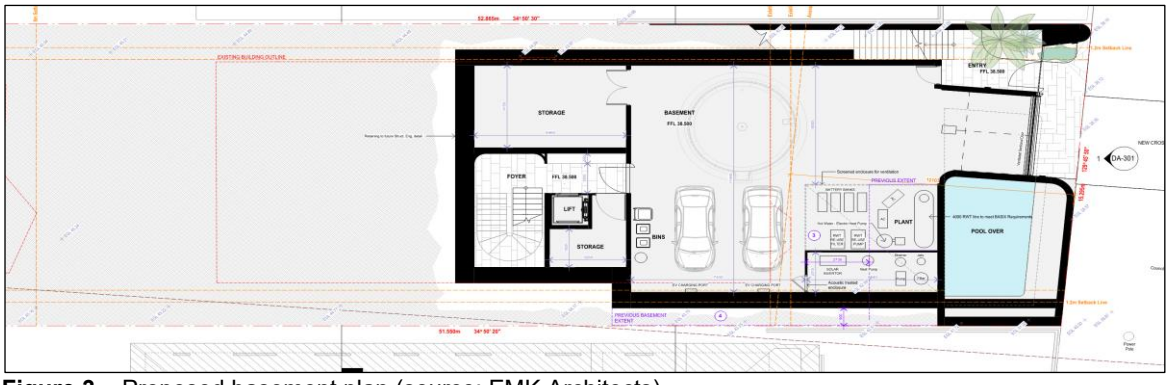


Figure 3 – Proposed basement plan (source: EMK Architects)

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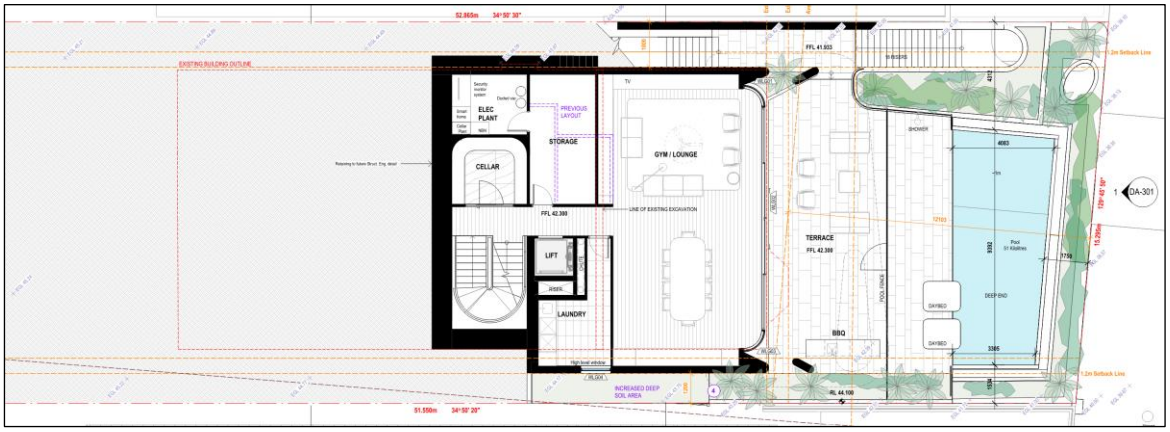


Figure 4 – Proposed lower ground floor plan (source: EMK Architects)



Figure 5 – Proposed ground floor plan (source: EMK Architects)

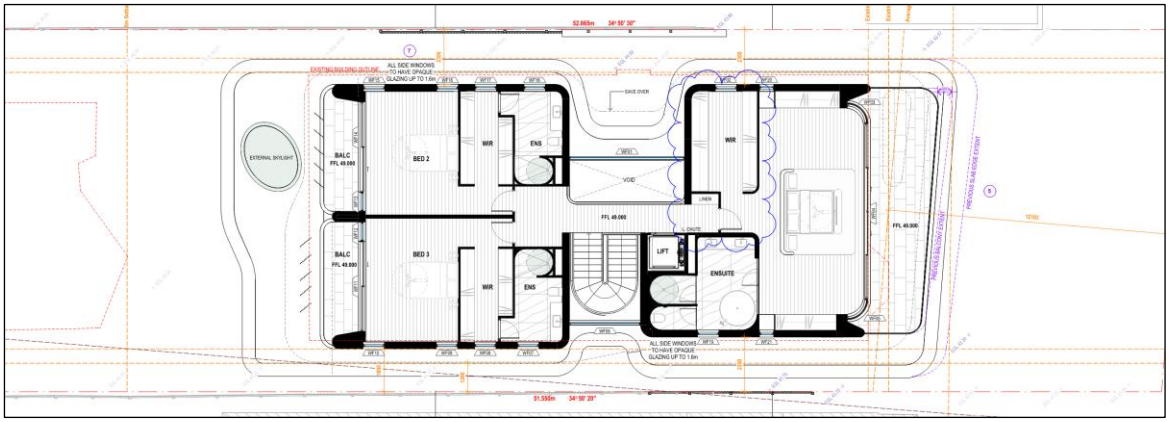


Figure 6 – Proposed first floor plan (source: EMK Architects)

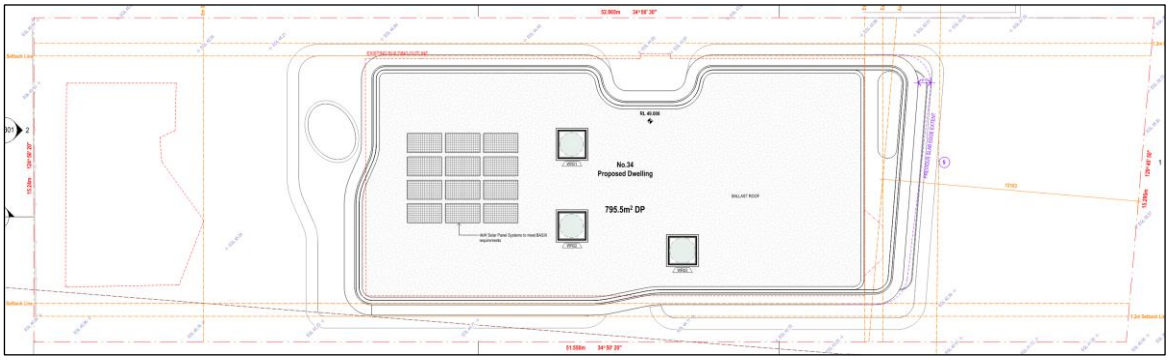


Figure 7 – Proposed roof plan (source: EMK Architects)



Figure 8 – Proposed section 1 (source: EMK Architects)

The key issues associated with the Application relate to three-four storey presentation and side setbacks, views, and excavation.

The Application was subject to a request for information which resulted in amendment and additional information, accounted as follows:

1. Existing Building Demolition: Adjusted the existing rear shed extent to be shown correctly within our site boundary. Only the eave sits beyond the boundary.
2. Neighbouring Building Heights: Existing neighbouring buildings have been adjusted to shown accurately with RL's
3. Basement Design Amendment: Basement layout has been reconfigured to increase side setback by 900mm to eastern boundary. Plant areas reconfigured to accommodate reduced area.
4. Deep Soil Increase: Basement has been reconfigured to increase the setback along the eastern boundary by 900mm, increasing deep soil area.
5. Front Setback Amendment: Front balconies have been further setback to align with neighbouring properties.
6. Reduced Building Height: Floor to floor heights reduced to comply with 9.5m height limit from natural ground line. EGL RL points from the survey have been shown in elevation to demonstrate compliance.
7. Side Windows: First floor side windows to have opaque glazing up to 1.6m
8. GFA calculations have been amended.
9. Section Drawing of Existing Building: Sheet DA-404 has been added, showing a section of the existing building.
10. 3D Setback Envelope Diagram: Sheet DA-821 has been added, showing a 3D overview of the setback envelope.

Figure 9 – Schedule of amendments / additional information (source: EMK Architects, 10/04/2026)

The Application is recommended for approval subject to non-standard conditions that require:

- A partial reduction to the front setback balcony's non trafficable overhang;
- Amended elevation drawings confirming heights of new proposed walls/fences;
- Height of roof solar panels;
- Basement rooms to be non-habitable; and
- For the landscape plan to be consistent with the drawings by EMK Architects.

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2. Site Description and Locality

The Subject Site is located at 34 Mermaid Avenue, Maroubra. It is regular in shape and measures 795.5sqm by survey with a 15.295 metre frontage to Mermaid Avenue.

The Subject Site is improved by an existing two storey dwelling, readily identifiable through its elevated ramped entrance and dark bricked exterior. A small detached single garage comprised of brick exists in front of the Subject Site, within the front setback. The Subject Site benefits from two vehicular crossovers.
The surrounding area is characteritsed by steeply sloping sites and elevated dwellings which present three storeys to the street.



Figure 10 – Subject Site (*source: Site visit 17/03/2026)*



Figure 11 – Subject Site view toward Mermaid Avenue from garage (*source: Site visit 17/03/2026)*



Figure 12 – Surrounding dwellings on Mermaid Avenue (*source: Site visit 17/03/2026)*



Figure 13 – Nearby 16 Mermaid Avenue (source: Site visit 14/04/2026)

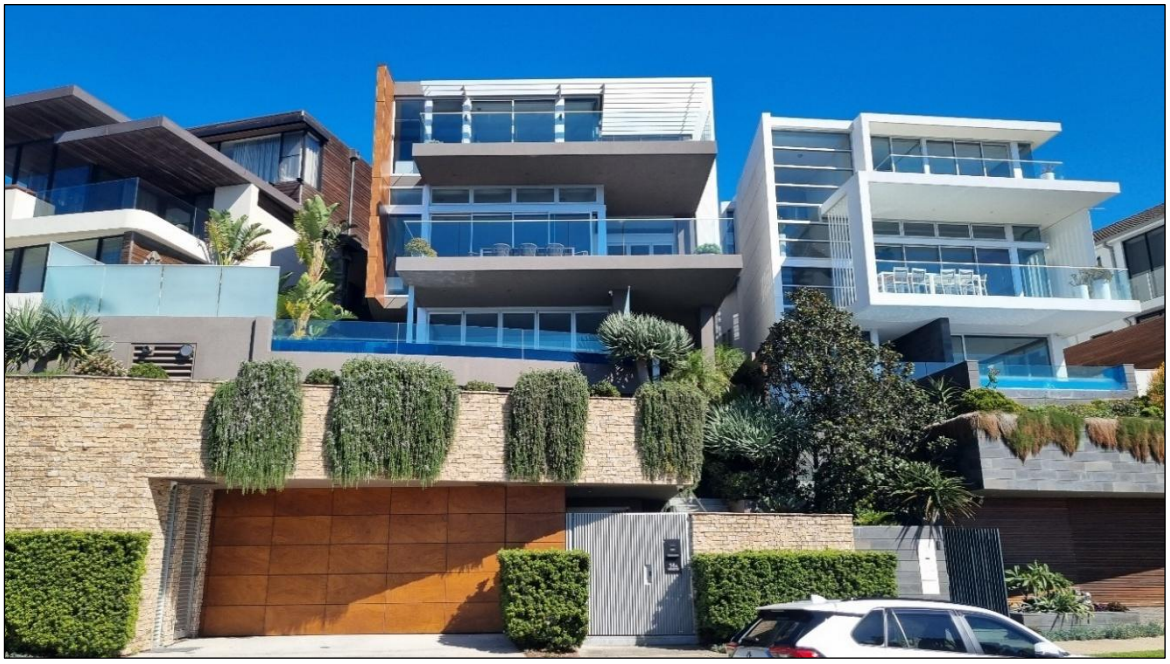


Figure 14 – Nearby 14A Mermaid Avenue, Maroubra (source: Site visit 14/04/2026)

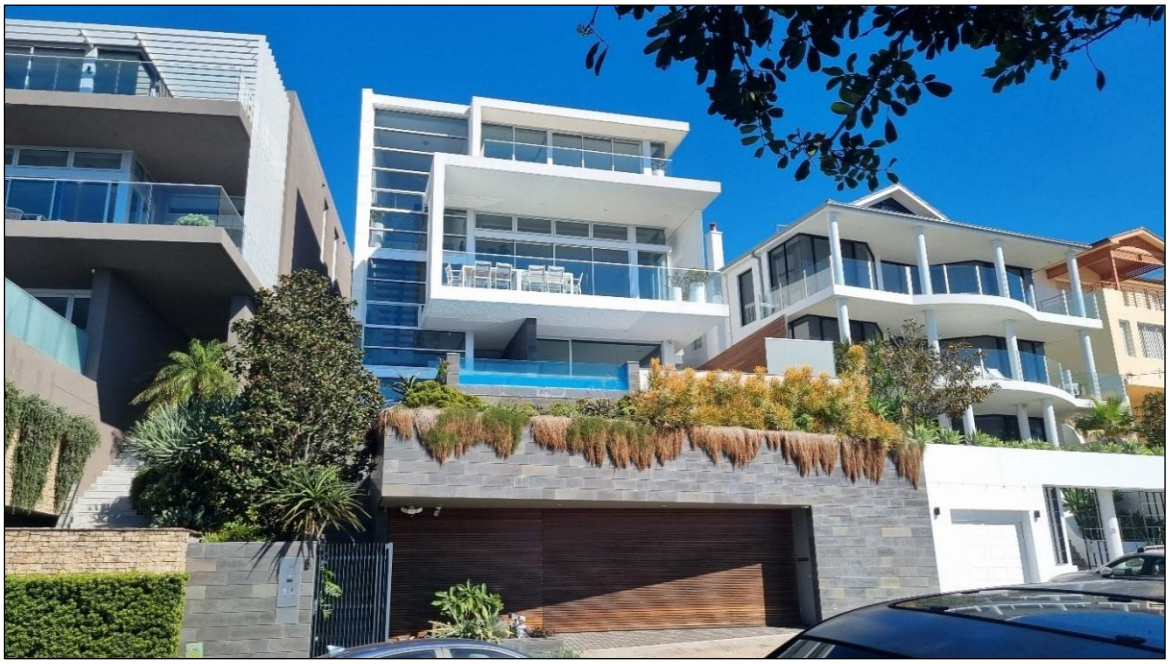


Figure 15 – Nearby 14 Mermaid Avenue, Maroubra (source: Site visit 14/04/2026)

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records did not reveal any recent or relevant applications for the site.

3.1. Neighbouring history

30 Mermaid Avenue, Maroubra
- DA/915/2014 was determined on 14 July 2015 at a Council meeting.

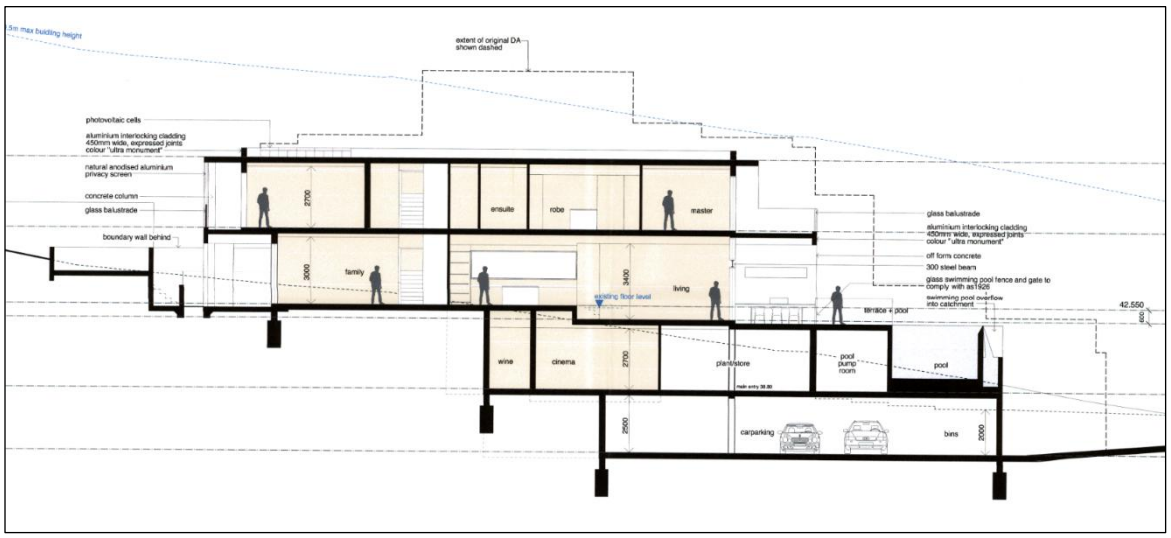


Figure 16 – DA/915/2014

32 Mermaid Avenue, Maroubra
- DA/932/1999 (DB search) – Alts/adds

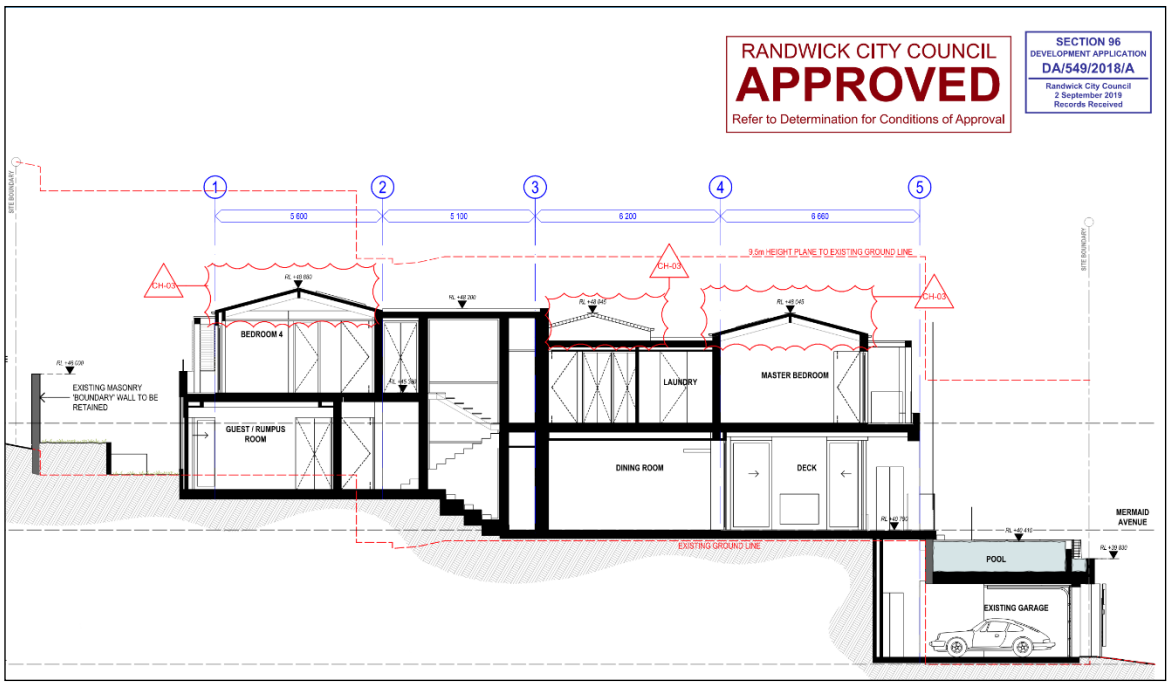
36 Mermaid Avenue, Maroubra
- All approvals prior to 1992.

38 Mermaid Avenue, Maroubra
- Built circa 1989-1990

- DA/1116/2007 was determined on 12 February 2008 and approved extension of he garage within the rear yard.

42 Mermaid Avenue, Maroubra

DA/549/2018/A was determined on 26 July 2019 and approved partial demolition of the existing garage and construction of a new dwelling.



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4. Notification

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

Two joint submissions were received from the occupiers of the neighbouring 32 and 36 Mermaid Avenue, Maroubra. An additional late submission was provided (points 9,10,11) The following was raised.

Matter Raised	Comment
1. 9.5 height limit breached.	1. See key issues / Clause 4.6 variation request.
2. Insufficient privacy.	2. See privacy assessment.
3. Wall height non-compliance.	3. No wall height control for C1 development.
4. Setbacks are not acceptable.	4. Setbacks referenced in submission appear to be for C2 development. Notwithstanding see key issues regarding side setbacks.
5. Objectives not satisfied and insufficient clause 4.6 variation request.	5. See Clause 4.6 variation request.
6. Existing ground level is incorrect.	6. Existing section provided to confirm EGL is correct. Council satisfied via amended information.
7. 32 Mermaid Avenue is not depicted accurately.	7. Extent of inaccuracy and reasons not made clear. Council is generally satisfied of the provided elevations.
8. Balance of privacy and views not achieved.	8. See key issues / revisions to drawings.
9. Revised balcony alignment is good.	9. Noted.
10. Potential inconsistency between heights of adjoining dwellings and RL levels. Based on this, questionable whether height is suitable.	10. See development standards assessment. Council satisfied that height is accurate for proposal.
11. Height of side fence / wall unclear.	11. Amended drawings conditioned to clarify.

5. Relevant Environment Planning Instruments

5.1. SEPP (Sustainable Buildings) 2022

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

5.2. 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 Application proposes minimal vegetation removal. Council is accordingly satisfied of the considerations under Chapter 2 of the SEPP.

5.3. 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 Application is likely to cause an adverse impact on the coastal use area.

The Application 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 Application 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 Application 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 Application is not likely to cause increased risk of coastal hazard on the Subject Site or other land. It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the coastal land and therefore clause 2.12 is satisfied.

Chapter 4 - Remediation of Land

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

The Subject Site has only previously been used for residential purposes and as such is unlikely to contain any contamination. The nature and location of the Application (involving excavation and construction of a new dwelling) are such that any applicable provisions and requirements of the SEPP have been satisfactorily addressed.

5.4. Randwick Local Environmental Plan 2012 (LEP)

The Subject Site is zoned Residential R2 Low Density under Randwick Local Environmental Plan 2012 and the Application is permissible with consent.

The Application 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 Application:

Clause	Development Standard	Application	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.6: 1 (477.3sqm max)	0.6: 1 476.6sqm	Yes – condition recommended to retain uses within basement as per GFA definition and plan set.
Cl 4.3: Building height (max)	9.5 Metres	11.04 Metres	No – see 4.6



Figure 17 – GFA / FSR calculation

5.4.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in section 6 below.

5.4.2. 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.

A view assessment from neighbouring properties has been provided under key issues. As a result of that assessment, Council is satisfied that the Application will not compromise the scenic qualities of the foreshore location and has been designed to protect existing views from neighbouring properties. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP 2012.

6. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Application	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	9.5 Metres	11.04 Metres	1.54m	16.2%

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

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

3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
   (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard

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

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

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

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

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

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

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

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

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

   1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

   2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

   Additionally, in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council [2023]* NSWLEC 1065, Commissioner Dickson at [78] notes that the avoidance of impacts may constitute sufficient environmental planning grounds "as it promotes "good design and amenity of the built

environment", one of the objectives of the EPA Act." However, the lack of impact must be specific to the non-compliance to justify the breach (*WZSydney Pty Ltd* at [78]*).*

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

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

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

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

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

   The objectives of the height of buildings standard are set out in Clause 4.3 (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 the following:

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,	As shown in the following northern elevation, the proposed building height, inclusive of the height variation, achieves a consistent and compatible streetscape outcome with the neighbouring dwellings on either side. The height variation is associated with a scale of built form that sits comfortably and appropriately between the dwellings on either side. On this basis, the height variation is not responsible for any adverse streetscape impact but rather contributes to a more cohesive streetscape outcome than if full compliance were enforced.

Figure 18 – 4.6 objective a) assessment.

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

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

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

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

(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of visual bulk, loss of privacy, overshadowing, or loss of views, and a reduction in this height would not create additional benefit for adjoining properties or the locality. Visual Bulk: The FSR is compliant, whilst the visual bulk and scale of the building are compatible with the series of dwellings along this section of Mermaid Avenue. Overshadowing: The 3D view from the sun diagrams also confirms that the portion of the built form that is over the height limit is not responsible for any adverse or unreasonable shadow impacts noting that all solar access between 8am and 4pm on June 21 is maintained to the north facing living and primary private open space areas of the adjoining dwellings either side at 32 and 36 Mermaid Ave. The private open space for the adjoining property to the east at 36 Mermaid Ave contains a swimming pool and surrounding terraces, which are unaffected by overshadowing, which also confirms the reasonableness of the height variation. View Loss: The height breach of the dwelling at the front of the site is only due to previous excavation and the steeply dropping topography towards the front. On this basis, any views that are impacted by the height variation do not arise from poor design but rather from previous excavation, which is a sufficient environmental planning ground under *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*.

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Figure 19 – 4.6 objective c) assessment.

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	The existing dwelling is single storey in height as viewed from the properties to the rear addressed to Torrington Rd. The proposal results in the built form being 2-storeys at the rear, which is well below the height limit and consistent and compatible with the series of developed dwellings along this section of Mermaid Avenue. The portions of the built form exceed the height limit as viewed from the rear only due to the sloping nature of the site and previous excavation at the northern end of the site. The accompanying view analysis and series of long sections through to the properties to the south/rear addressed to 10, 12 and 14 Torrington Rd show that views from the upper levels of these properties will be retained or that views will be gained from likely redevelopment. In particular, No. 14 Torrington Rd presents to Torrington Rd as single storey, and it is understood that a DA will be lodged for a dwelling which will be 2-storeys. On this basis, the view loss is of a temporary nature. Privacy: The height variation is also not considered to be responsible for any unreasonable visual or acoustic privacy impacts, given that the siting and elevation of north-facing windows and balconies are consistent with the adjoining properties on either side. As shown in the photographic analysis, the desire to capture ocean views takes precedent over privacy, noting that each of the front north-facing windows and balconies has the opportunity to view directly into the respective balconies and front podium landscape areas and swimming pool of the adjoining properties.  **Figure 5: Coastal views to the north** On this basis, the elements over the height limit will not generate any adverse or unreasonable privacy, shadow or view impacts.

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Figure 20 – 4.6 objective c) assessment.

Consistency with the Objectives of the R3 Medium Density Residential Zone	
Objectives	**Assessment**
- *To provide for the housing needs of the community within a low density residential environment.* - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.* - *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.* - *To protect the amenity of residents.* - *To encourage housing affordability.* - *To enable small-scale business uses in existing commercial buildings.*	The site is zoned R2 Low Density Residential under the provisions of Randwick LEP 2012. The proposed building height variation does not raise any inconsistency with the ability of the proposal to achieve the relevant objectives of the R2 Low Density zone, in that the proposal improves the residential amenity and protects the amenity of surrounding residences in regard to full retention of solar access to primary living and private open space areas, whilst also respecting visual and acoustic privacy. As outlined above, there are no adverse or unreasonable view impacts. Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the height variation.

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.

Figure 21 – 4.6 objective c) assessment.

Assessing officer's comment: Council agrees that the height breach would not result in adverse impact by way of bulk, privacy loss, shadows, or view loss. Council's own assessment of these matters has found concurrence with the Applicant's position. Accordingly, 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 demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

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

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- The primary elements associated with the building height departure are limited to the ceiling of the ground floor, first floor and roof at the northern side of the building. Previous excavation on the site is responsible for the height variation for this component. Such circumstance is consistent with the findings of the judgement *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, whereby Commissioner O'Neill found that previous excavation which results in a height variation constitutes an environmental planning ground. The excerpt of the long section below shows that the height variation fronting Mermaid Avenue is due to the previously excavated basement, as shown in the long section below:

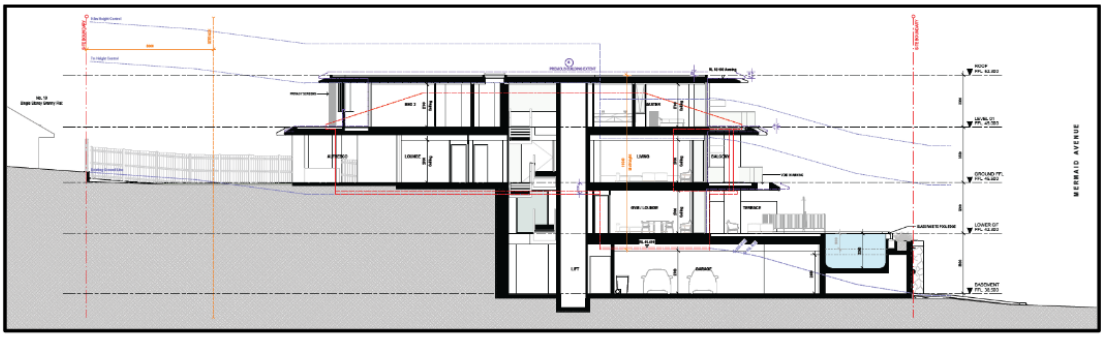


Figure 6: Excerpt of long section, noting height variation due to previous excavation to Mermaid Avenue frontage. The long section also shows that the new building height is only 1.14-metre above the ridge of the existing dwelling and that the built form is well below the height limit where the site is level.

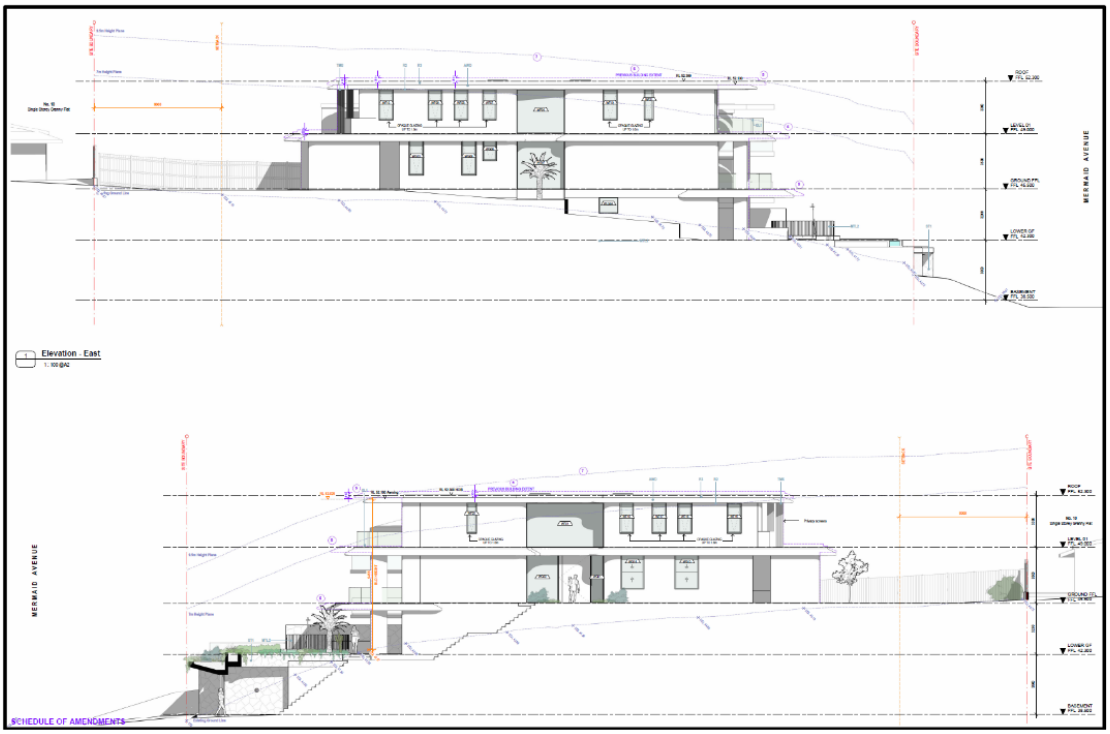


Figure 7: Excerpt of east and west elevations, compliant with the height limit which confirms that the height variation is due to the previous excavation that has occurred on the site

9

Figure 22 – 4.6 environmental planning grounds

- Despite the building height non-compliance, the proposed height is compatible with neighbouring 2-4 storey buildings to the east and west of the site along Mermaid Avenue. The bulk and scale of the proposal are compatible with the existing and desired future character of the locality. The built form presents as 3-storeys above the garage/podium level which is consistent and compatible with the dwelling immediately to the west at 32 Mermaid Avenue, as shown in the montage below.

- As demonstrated in the Shadow Diagrams submitted with this application, despite the building height variation, the proposal will not result in unreasonable overshadowing to the surrounding properties. The north-south orientation of the site ensures that the north facing windows and private open space areas of the surrounding properties to the east and west remain unaffected by the portion above the height limit and receive all solar access between 8am and 4pm on June 21. Such lack of impact is considered to constitute a sufficient environmental planning ground.

- In regard to view sharing, the rear component of the dwelling is significantly below the 9.5m height limit (which is where the views from the southern neighbours addressed to Torrington Rd are obtained. Such design measures suitably minimises and reasonably retains coastal views from the properties to the south/rear addressed to 10,12 and 14 Torrington Rd. These three properties are substantially elevated above the subject site and include 2 to 3-storey built forms, which allow for retention of water views over the proposed dwelling. There will be a minor loss of views; however, this is considered to be reasonable given that the rear component of the existing dwelling is only one storey and the increase to two storeys is compliant with the height provisions, whilst also being compatible with the scale of dwellings on either side.

- There are no streetscape impacts associated with the height variation, as the portion above the height limit will appear as being compatible with the scale of dwellings on either side of Mermaid Avenue. The following excerpt of the montage confirms the compatibility of the new dwelling despite the height variation:

Figure 23 – 4.6 environmental planning grounds

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Figure 8: The above image confirms that the height variation associated with the roof form and northern edge of the dwelling do not generate any incompatibility with the streetscape along this section of Mermaid Avenue. The recessed nature of the upper level from the sides of the built form below also assists in achieving a compatible outcome with the dwelling to the east at 36 Mermaid Avenue.

- 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.

Figure 24 – 4.6 environmental planning grounds

Assessing officer's comment: The Application has been amended for the entirety of the height breach to be technical, resultant from the previous basement excavation. When viewed from the street the dwelling would integrate appropriately. Council is satisfied that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

Council recommends condition for the proposed solar panels so that they do not exceed the height limit and not contribute any view impact.

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

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	**Comments**
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 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 Application generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant residential character in the locality. The Application 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 issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The Application promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the Application is considered to be in the public interest.

8.1. Discussion of key issues

Four Storey Presentation & Side Setbacks

Part C1 of RDCP prescribes a maximum two storey limit and side setback controls which scale according to building height. Those side setback controls intensify above the 7 metre mark, essentially forcing a roof pitch to create a two storey dwelling.

Difficulty in compliance with these controls occurs for sites such as the Subject Site, where steep inclines occur and the ground level is not flat. The setback envelope **Figure 25** below provides a visualisation of required side setbacks and how they change dependent on existing ground level.

Per the below **Figure**, the built form of the dwelling remains generally consistent across the Subject Site, being close to compliant at the rear despite the intensified setbacks above 7 metres. As the building moves forward to the front of the site, an increased side setback for the first floor is provided, however the envelope protrusion intensifies due to the slope of the land. This is a direct result of how the control is written, requiring measurement from existing ground level. Accordingly, full compliance with the side setback controls on a site with a topography such as the Subject Site, would result in a poor outcome for the overall form, amenity, and usability of the dwelling.

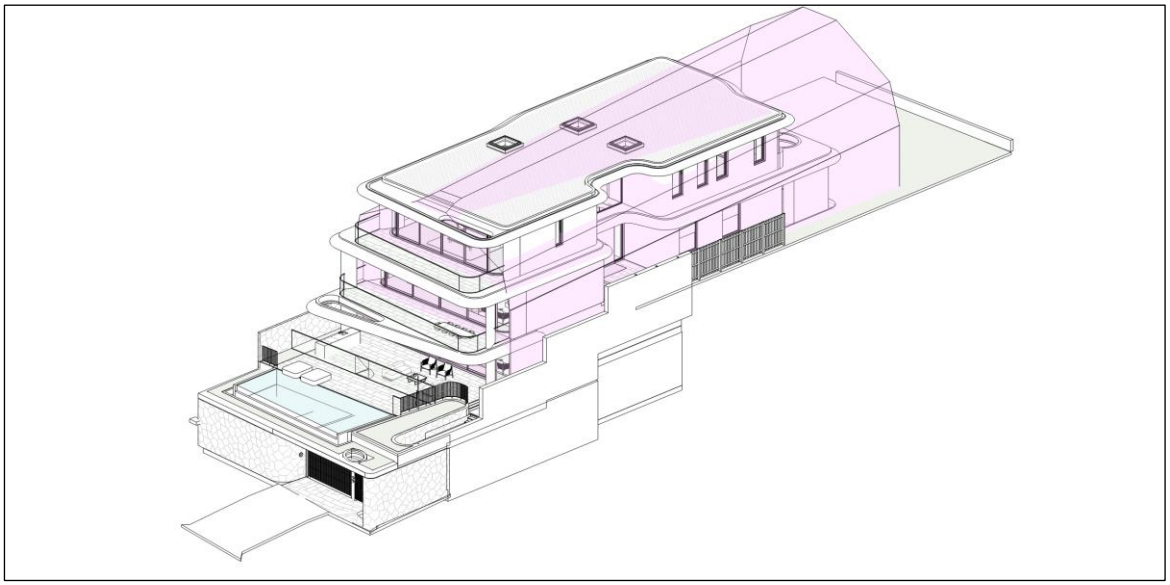


Figure 25 – Side setback envelope diagram.

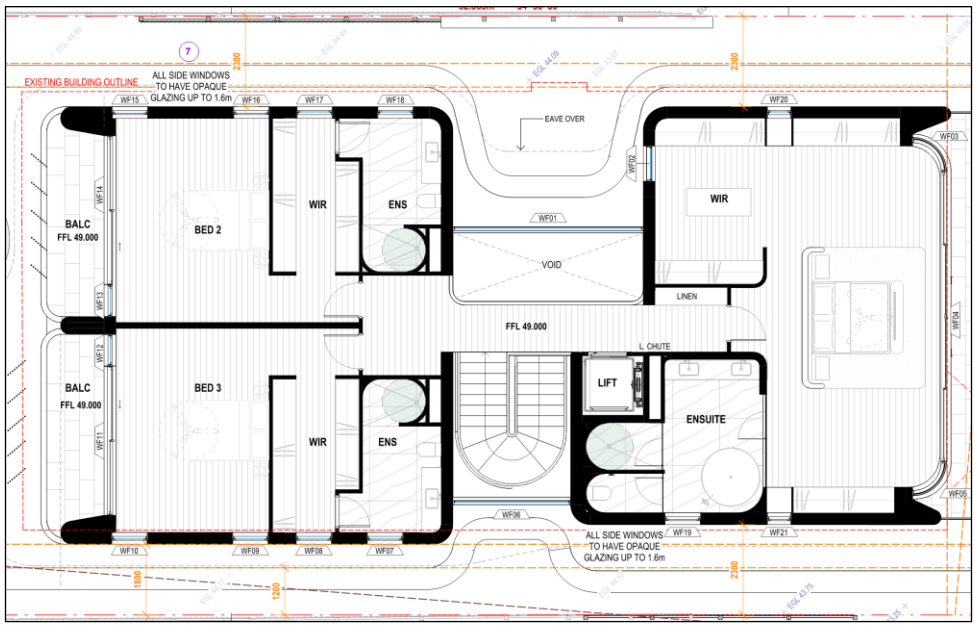


Figure 26 – Proposed first floor – 2300mm side setbacks.

Notwithstanding the above, an assessment is provided of the side setbacks against the relevant setback objectives under C1.

• *To maintain or establish a consistent rhythm of street setbacks and front gardens that contributes to the character of the neighbourhood*

The locality is dominated by larger dwellings, and the side setbacks are generally in keeping with surrounding development. They are not considered to result in any unacceptable disruptions to the character of the locality.

• *To ensure the form and massing of development complements and enhances the streetscape character and maintains a two storey street frontage*

The form and massing of the streetscape and its wider surrounds are not that of two storey street frontage. The form and massing therefore integrates into this existing character.

• *To ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access*

Per assessment for those relevant items in this report, the Application is seen to be acceptable with regarding to visual and acoustic privacy, and solar access.

• *To reserve adequate areas for the retention or creation of private open space and deep soil planting*

The Application provides in excess of the minimum private open space and would result in a significant net increase in total deep soil permeable surfaces.

• *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

See view impact assessment below. This report finds view sharing to be suitable.

Views from the public domain would be generally unaffected by the Application.

As per the above, it is considered that the proposed side setbacks achieve the relevant setback objectives. Notwithstanding, the final test the Application must pass is that of its 3/4 storey street presentation.

Council's building height controls under C1 allow for variation to two storey presentation where the following is to be considered:

- Site topography
- Site orientation
- Allotment configuration
- Flooding requirements
- Allotment dimensions
- Potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties.

The land slopes from its rear to Mermaid Avenue approximately 7.25 metres, considered to have a significant slope. The site and lot orientation are regular and consistent with the surrounding character. Flooding has not been raised as an issue to prohibit approval from Council's development engineers. Of further consideration, much of the surrounding, if not all of it, presents as more than two storeys to the street.

The development as a whole is considered to suitably mitigate much of the major impacts that are associated with larger development. Visual amenity is achieved through suitable planting, appropriate articulation and setbacks, as well as quality material selection. Solar access for surrounding development complies with Council's relevant requirements. Views are assessed below to be acceptable. Lastly privacy is considered appropriate and addressed per Council DCP assessment.

Further, the Application is assessed against the relevant height objectives under 3.2 of C1 of RDCP.

• *To limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring dwellings*

The bulk and scale of the development is substantially in line with adjoining dwellings and the surrounding streetscape. Planting and articulated form assist the reduce the visual impact.

• *To ensure low density residential development maintains a two-storey height and street frontage*

The surrounding area does not exhibit a two storey street height. The Application seeks development which is consistent with the streetscape.

• *To position any habitable space above the first floor level within the roof of the dwelling*

Per the above side setback assessment, it was determined that the proposed side setbacks are acceptable on the basis of the sites sloping topography, streetscape consistency, and general lack of impact to the surrounds. Accordingly, habitable space above the first floor is acceptable as proposed.

• *To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity*

Per the above, these matters are considered acceptable.

• *To ensure the form and massing of development is respectful of site topography.*

The form and massing respond directly to the topography.

Resultant from the above, it can be concluded that the proposed street presentation and side setbacks for the Application are acceptable as they are consistent with Council's objectives and the streetscape and lack any unacceptable impact to the locality.

Views

This report provides an assessment of views for the neighbouring 32 and 36 Mermaid Avenue, consistent with the view sharing principles under Tenacity Consulting v Warringah Council.

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

The views concerned are expansive water views and that of the horizon. Minor land and water interface views can be witnessed.

Views from the rear at 10 and 12 Torrington Road are considered appropriately retained through the Applicants provided sections (see below).

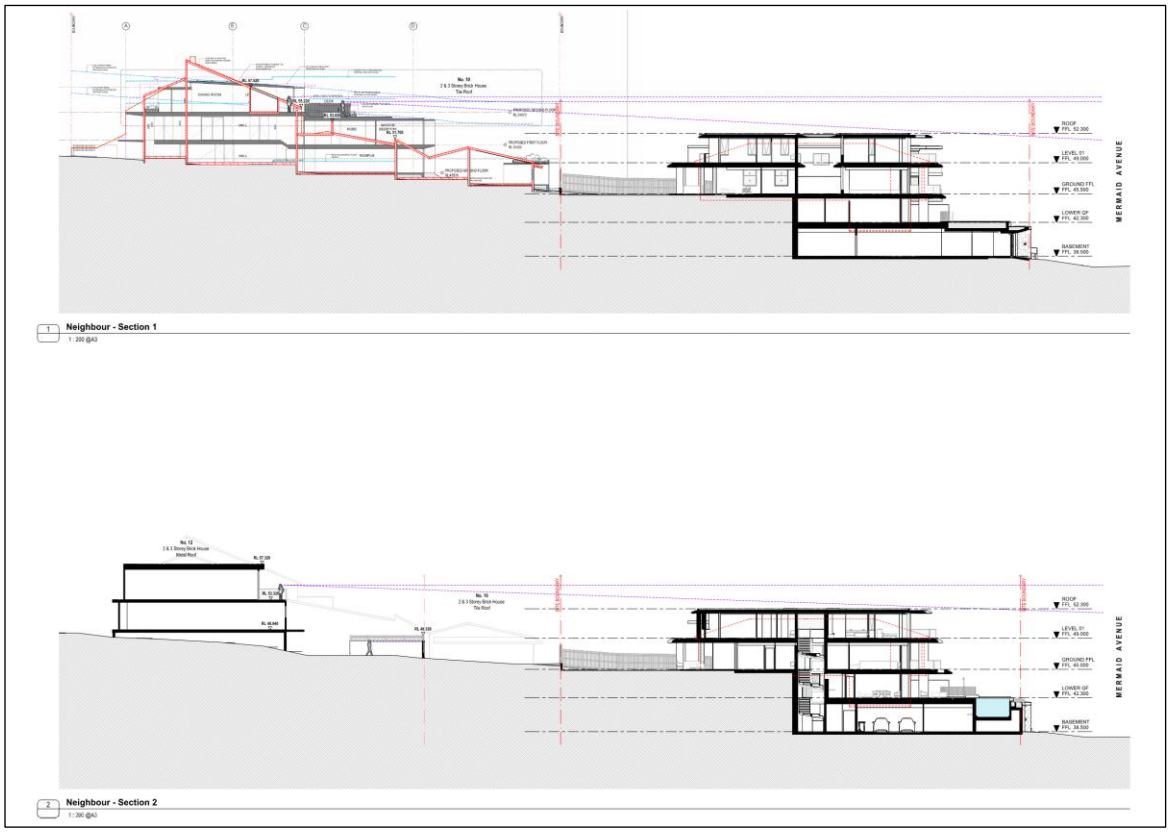


Figure 27 – Section and rear sections at Torrington Road.

Views from 36 Mermaid Avenue to the water will be for all intents and purposes unaffected by the Application across multiple view points from that property.

This remainder of this view assessment therefore is only concerned with assessment of view impacts from 32 Mermaid Avenue, whose aspect has potential to be affected.

27. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Views are obtained from the front of 32 Mermaid Avenue, from its:

- Ground floor entrance;
- First floor living room and balcony; and
- Second floor balcony and bedroom.

The ground floor entrance is identified as the least important location in which views are obtained from.

The first floor living room is identified as the most prominent location in which views are obtained from.

The first floor balcony, second floor balcony, and second floor bedroom are all identified as important locations in which views are obtained from.

Views from all of the above locations can be obtained in standing and sitting positions.

Images from 32 Mermaid Avenue illustrating the above are provided below.



Figure 28 – 32 Mermaid Avenue, Maroubra (source: Site visit 14/04/2026)



Figure 29 – 32 Mermaid Avenue – ground floor view toward 34 Mermaid Avenue (source: Site visit 14/04/2026)



Figure 30 – 32 Mermaid Avenue – ground floor view toward the ocean (source: Site visit 14/04/2026)



Figure 31 – 32 Mermaid Avenue – ground floor view toward the ocean and nearby properties (source: Site visit 14/04/2026)

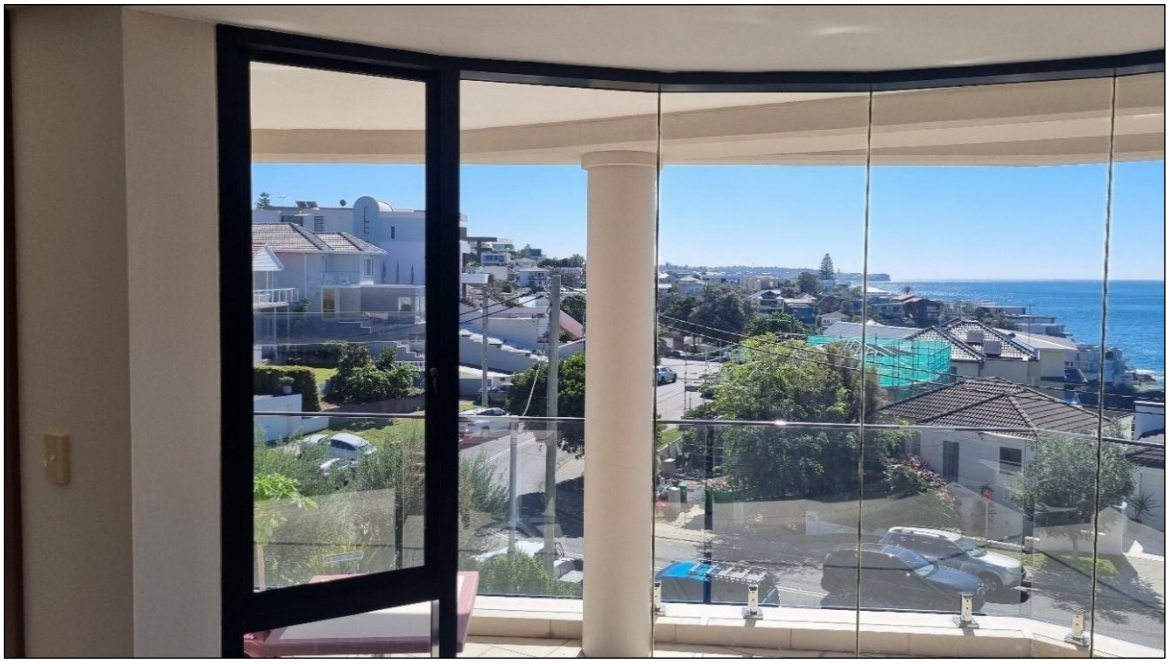


Figure 32 – View from first floor living room – partial water view and district outlook (source: Site visit 14/04/2026)



Figure 33 – View from first floor living room – expansive water views and district outlook. Minor land / water interface (source: Site visit 14/04/2026)



Figure 34 – View from first floor living room – expansive water views and minor land water interface (source: Site visit 14/04/2026)



Figure 35 – **Sitting** view from first floor living room – expansive water views (source: Site visit 14/04/2026)



Figure 36 – First floor balcony view across 34 Mermaid Avenue – distant water view (source: Site visit 14/04/2026)



Figure 37 – First floor balcony view – expansive water view (source: Site visit 14/04/2026)



Figure 38 – first floor balcony view – expansive water view and minor water / land interface (source: Site visit 14/04/2026)



Figure 39 – first floor balcony – minor water view – primarily a district outlook (source: Site visit 14/04/2026)

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Figure 40 – Second floor view from inside, toward balcony – water / land interface and water views (source: Site visit 14/04/2026)



Figure 41 – Second floor balcony view toward 34 Mermaid Avenue – side view – water view (source: Site visit 14/04/2026)



Figure 42 – Second floor balcony view – expansive ocean / horizon view with land/water interface (source: Site visit 14/04/2026)



Figure 43 – Second floor balcony view – partial ocean & land/water interface + district view (source: Site visit 14/04/2026)



Figure 44 – Second floor bedroom view – expansive ocean view and land / water interface (source: Site visit 14/04/2026)



Figure 45 – Second floor bedroom view – expansive ocean view (source: Site visit 14/04/2026)



Figure 46 – Second floor bedroom view toward 34 Mermaid Avenue, Maroubra (source: Site visit 14/04/2026)

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

Through the Application, the expansive horizon views experienced by 32 Mermaid Avenue will continue to be enjoyed.

The extent of the impact of the Application on the views of 32 Mermaid Avenue, Maroubra is considered to be minimal and certainly acceptable. The proposed balconies for the Subject Site are proposed generally in line with those of 32 Mermaid Avenue, ensuring a consistency in the front setback (assessed further under front setback below).

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

The Application complies with FSR and site coverage. Side setbacks do not comply, however do not have any impact on the primary view aspects. The front setback (see DCP assessment) is identified as being acceptable subject to conditions for street consistency. The height breach is understood to be largely technical and not responsible for any view impact. The ground floor western blade walls adjoining the first floor balcony is not viewed to contribute any unreasonable view impact.

The above assessment demonstrates the Application is suitable with regard to views.

Earthworks

The Application seeks a maximum cut of 7.6 metres to facilitate its basement level. Council's controls under C1 of RDCP permit a maximum cut of 1 metre. All excavation achieves the minimum 900mm side setbacks required by RDCP.

The relevant considerations for earthworks and excavation are Clause 6.2 of RLEP and 4.7 Earthworks under C1 of RDCP. Per the above assessment in this report, Council is satisfied of the earthworks with regard to Clause 6.2 of RLEP.

Accordingly, the primary aspect of consideration is the variation sought to the maximum cut. An assessment of the earthwork objectives under 4.7 of C1 of RLEP is provided below.

- *To maintain or minimise change to the natural ground levels, streetscape, and natural environment.*

As viewed from the streetscape and surrounding environment, the earthworks would not result in any perceptible change to the ground levels of the locality. The side setbacks provided for the dwelling will continue to exist and provide visual indication of the lands topography.

- *To ensure excavation and backfilling of a site does not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings*

Excavation and backfilling is not considered to result in any unreasonable structural, visual, shadow, or privacy impact. Further the development in its totality is considered acceptable with regard to these considerations.

- *To provide usable private open space for dwellings with adequate gradient*

The Application proposes far in excess of the minimum required private open space.

- *To ensure earthworks do not result in adverse stormwater impacts on adjoining properties*

Council's engineers are satisfied of the development subject to their relevant conditions.

- *To ensure earthworks do not impact upon the ability to achieve deep soil permeability surface areas and canopy tree planting*

The Applicant amended the proposal to increase excavation setbacks which did increase total deep soil permeable surfaces. Further amendment to, or removal of all proposed excavation would have minimal to no impact on total deep soil permeable surfaces due to the front podium.

Total deep soil at the Subject Site is further proposed to be a net increase.

- *To prevent the use of subterranean spaces as habitable areas.*

No excavation is proposed to result in subterranean habitable space.

Subject to the above assessment and relevant conditions of consent, Council is satisfied that the proposed excavation is suitable.

9. Conclusion

That DA/189/2026 for *"Demolition of existing building/structures and construction of a 3-storey dwelling house with basement level comprising car parking, storage and plant rooms and foyer, installation of swimming pool within front setback, associated excavation, ancillary and landscaping works."* be approved (subject to conditions) for the following reasons:

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

- The Application is consistent with the specific objectives of the R2 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 Application is considered to be suitable for the location and is compatible with the desired future character of the locality.

- The Application satisfies the requirements under Clause 4.6 of RLEP to allow variation of the height of buildings standard and permit the grant of consent.

The following non-standard conditions are proposed:

2. Amendment of Plans & Documentation

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

a. *The front setback of the ground and first floor balcony must be reduced so that no part protrudes forward of the orange marked line which crosses from 32 to 36 Mermaid Avenue.*

b. *Amended elevation drawings are to be provided which clearly indicate new side walls proposed and their height as well as existing fencing to be retained. New wall must not exceed 1.8 metres from existing ground level.*

c. *The landscape plans prepared by Exterior Architecture and approved under Condition 1 are to be amended (as relevant) to be consistent with the built form of the approved drawings prepared by EMK Architects. Planting location and selection is to remain generally consistent. The native schedule must remain at minimum 60%.*

The above amendments must be provided to and approved by Council's Manager Development Assessment prior to the issue of a construction certificate.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

Parking Comments
*Under Part B7 of Council's DCP 2013 the proposed **4**-bedroom residence is required to provide a minimum of **2** off-street carspaces. The submitted plans **do**/ demonstrate compliance with this requirement.*

Drainage Comments
Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling. The overflow from the rainwater tank and other surface stormwater must be directed (via a sediment/silt arrestor pit) to Council's kerb and gutter in Mermaid Avenue.

Landscape Comments
There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal.

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.*

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

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

34 Mermaid Avenue, Maroubra



Demolition of the existing dwelling and erection of a new dwelling house with basement parking and swimming pool

PREPARED BY

ABC PLANNING PTY LTD

April 2026

D25/26

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

This updated Clause 4.6 variation request has been prepared to accompany the Development Application for the demolition of the existing dwelling and erection of a new dwelling house with basement parking and swimming pool at 34 Mermaid Avenue, 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,

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 34 Mermaid Avenue, Maroubra and is requested to be looked upon favourably by the consent authority.

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(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 9.5m as shown on the RLEP2012 map below.

The maximum variation is associated with half of the second floor, which has a maximum height of 11.04m (1.54m variation or 16.2%) to the top of the awning. Such variation is due to the previously excavated ground level below the Mermaid Avenue frontage.



Figure 1: Building Height Map

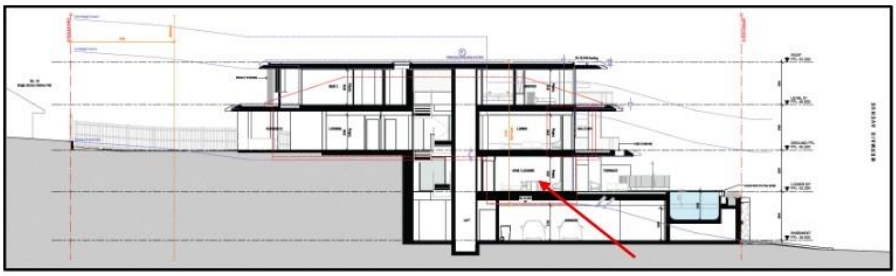


Figure 2: Excerpt of long section, noting height variation due to previous excavation with the arrow identifying the location of the excavated level. The section also shows that the new dwelling height is only 1.14m above the existing roof ridge and that the dwelling is single storey in scale at the rear/southern end of the property

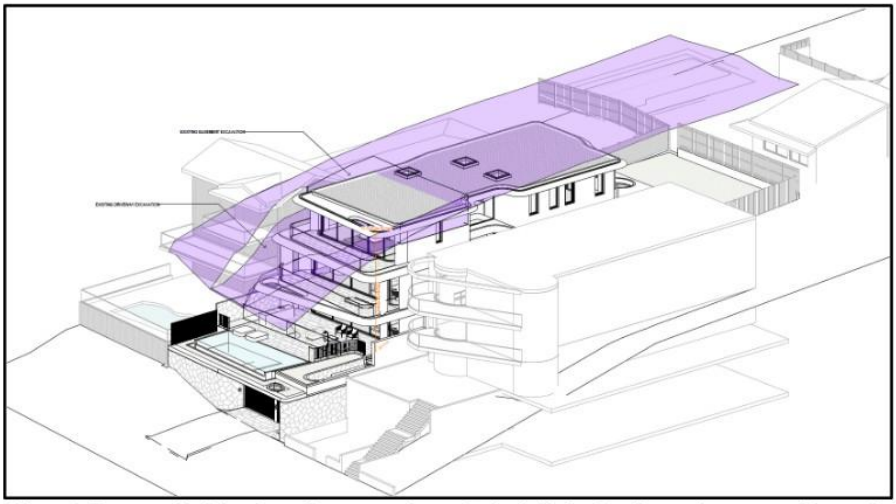


Figure 3: Excerpt of height plane diagram, noting variation is limited to the northern part of the roof

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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:

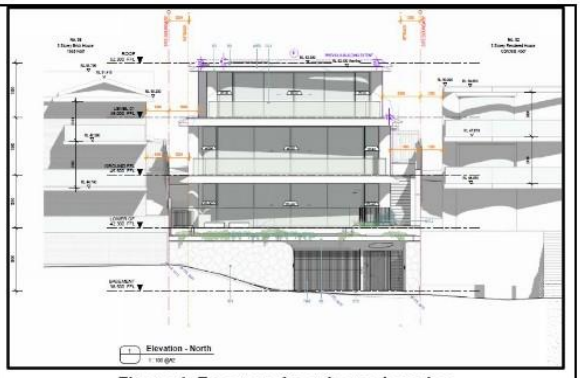
Compliance with the development standard is unreasonable or unnecessary if the:

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,	As shown in the following northern elevation, the proposed building height, inclusive of the height variation, achieves a consistent and compatible streetscape outcome with the neighbouring dwellings on either side. The height variation is associated with a scale of built form that sits comfortably and appropriately between the dwellings on either side. On this basis, the height variation is not responsible for any adverse streetscape impact but rather contributes to a more cohesive streetscape outcome than if full compliance were enforced.

	 **Figure 4: Excerpt of northern elevation**
(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item	The site is not heritage listed nor is it in a conservation area and is not adjacent to any heritage items.
(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	The proposed exceedance of the height control will not create unreasonable environmental amenity impacts in terms of visual bulk, loss of privacy, overshadowing, or loss of views, and a reduction in this height would not create additional benefit for adjoining properties or the locality. Visual Bulk: The FSR is compliant, whilst the visual bulk and scale of the building are compatible with the series of dwellings along this section of Mermaid Avenue. Overshadowing: The 3D view from the sun diagrams also confirms that the portion of the built form that is over the height limit is not responsible for any adverse or unreasonable shadow impacts noting that all solar access between 8am and 4pm on June 21 is maintained to the north facing living and primary private open space areas of the adjoining dwellings either side at 32 and 36 Mermaid Ave. The private open space for the adjoining property to the east at 36 Mermaid Ave contains a swimming pool and surrounding terraces, which are unaffected by overshadowing, which also confirms the reasonableness of the height variation. View Loss: The height breach of the dwelling at the front of the site is only due to previous excavation and the steeply dropping topography towards the front. On this basis, any views that are impacted by the height variation do not arise from poor design but rather from previous excavation, which is a sufficient environmental planning ground under *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.*

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The existing dwelling is single storey in height as viewed from the properties to the rear addressed to Torrington Rd. The proposal results in the built form being 2-storeys at the rear, which is well below the height limit and consistent and compatible with the series of developed dwellings along this section of Mermaid Avenue.

The portions of the built form exceed the height limit as viewed from the rear only due to the sloping nature of the site and previous excavation at the northern end of the site.

The accompanying view analysis and series of long sections through to the properties to the south/rear addressed to 10, 12 and 14 Torrington Rd show that views from the upper levels of these properties will be retained or that views will be gained from likely redevelopment. In particular, No. 14 Torrington Rd presents to Torrington Rd as single storey, and it is understood that a DA will be lodged for a dwelling which will be 2-storeys. On this basis, the view loss is of a temporary nature.

Privacy: The height variation is also not considered to be responsible for any unreasonable visual or acoustic privacy impacts, given that the siting and elevation of north-facing windows and balconies are consistent with the adjoining properties on either side. As shown in the photographic analysis, the desire to capture ocean views takes precedent over privacy, noting that each of the front north-facing windows and balconies has the opportunity to view directly into the respective balconies and front podium landscape areas and swimming pool of the adjoining properties.



Figure 5: Coastal views to the north

On this basis, the elements over the height limit will not generate any adverse or unreasonable privacy, shadow or view impacts.

Consistency with the Objectives of the R3 Medium Density Residential Zone	
Objectives	**Assessment**
- *To provide for the housing needs of the community within a low density residential environment.* - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.* - *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.* - *To protect the amenity of residents.* - *To encourage housing affordability.* - *To enable small-scale business uses in existing commercial buildings.*	The site is zoned R2 Low Density Residential under the provisions of Randwick LEP 2012. The proposed building height variation does not raise any inconsistency with the ability of the proposal to achieve the relevant objectives of the R2 Low Density zone, in that the proposal improves the residential amenity and protects the amenity of surrounding residences in regard to full retention of solar access to primary living and private open space areas, whilst also respecting visual and acoustic privacy. As outlined above, there are no adverse or unreasonable view impacts. Therefore, it is considered that the proposed development satisfies the zone objectives, notwithstanding the height variation.

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:

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- The primary elements associated with the building height departure are limited to the ceiling of the ground floor, first floor and roof at the northern side of the building. Previous excavation on the site is responsible for the height variation for this component. Such circumstance is consistent with the findings of the judgement *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, whereby Commissioner O'Neill found that previous excavation which results in a height variation constitutes an environmental planning ground. The excerpt of the long section below shows that the height variation fronting Mermaid Avenue is due to the previously excavated basement, as shown in the long section below:



Figure 6: Excerpt of long section, noting height variation due to previous excavation to Mermaid Avenue frontage. The long section also shows that the new building height is only 1.14-metre above the ridge of the existing dwelling and that the built form is well below the height limit where the site is level.

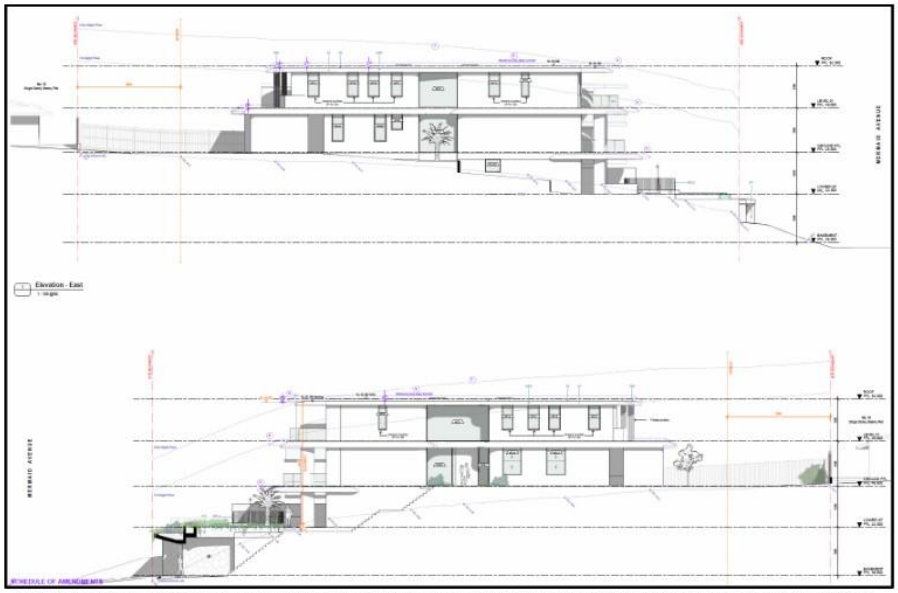


Figure 7: Excerpt of east and west elevations, compliant with the height limit which confirms that the height variation is due to the previous excavation that has occurred on the site

- Despite the building height non-compliance, the proposed height is compatible with neighbouring 2-4 storey buildings to the east and west of the site along Mermaid Avenue. The bulk and scale of the proposal are compatible with the existing and desired future character of the locality. The built form presents as 3-storeys above the garage/podium level which is consistent and compatible with the dwelling immediately to the west at 32 Mermaid Avenue, as shown in the montage below.

- As demonstrated in the Shadow Diagrams submitted with this application, despite the building height variation, the proposal will not result in unreasonable overshadowing to the surrounding properties. The north-south orientation of the site ensures that the north facing windows and private open space areas of the surrounding properties to the east and west remain unaffected by the portion above the height limit and receive all solar access between 8am and 4pm on June 21. Such lack of impact is considered to constitute a sufficient environmental planning ground.

- In regard to view sharing, the rear component of the dwelling is significantly below the 9.5m height limit (which is where the views from the southern neighbours addressed to Torrington Rd are obtained. Such design measures suitably minimises and reasonably retains coastal views from the properties to the south/rear addressed to 10,12 and 14 Torrington Rd. These three properties are substantially elevated above the subject site and include 2 to 3-storey built forms, which allow for retention of water views over the proposed dwelling. There will be a minor loss of views; however, this is considered to be reasonable given that the rear component of the existing dwelling is only one storey and the increase to two storeys is compliant with the height provisions, whilst also being compatible with the scale of dwellings on either side.

- There are no streetscape impacts associated with the height variation, as the portion above the height limit will appear as being compatible with the scale of dwellings on either side of Mermaid Avenue. The following excerpt of the montage confirms the compatibility of the new dwelling despite the height variation:

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Figure 8: The above image confirms that the height variation associated with the roof form and northern edge of the dwelling do not generate any incompatibility with the streetscape along this section of Mermaid Avenue. The recessed nature of the upper level from the sides of the built form below also assists in achieving a compatible outcome with the dwelling to the east at 36 Mermaid Avenue.

- 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 34 Mermaid Avenue, Maroubra and is requested to be looked upon favourably by the consent authority.

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Appendix 3: DCP Compliance Table

Part C1: Low Density Residential (2023)

DCP Clause	Controls	Application	Compliance
	Classification	Zoning = R2	
2	**Site planning**	Site = 795.5sqm	
2.4	**Site coverage**		
	601 sqm or above = 45%	227.9sqm (28.6%)	Yes
2.5	**Deep soil permeable surfaces**		
	601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces	Required = 357.9sqm (45%) Proposed = 210sqm (26.3%) i) Yes ii) None on site. iv) Podiumed front setback, unrealistic to achieve. Front landscaping proposed to offset. Net increase of 76sqm from 133.91sqm.	No – acceptable as there is a net increase in deep soil and significant planting increase
2.6	**Landscaping and tree canopy cover**		
	451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Suitable canopy trees proposed. i) see iii) above for 2.5. ii) 63%.	Suitable
2.7	**Private open space (POS)**		
	Dwelling & Semi-Detached POS		
	601 sqm or above = 8m x 8m	In excess of 8m x 8m proposed.	Yes
3	**Building envelope**		
3.2	**Building height**		
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: – Topography – Site orientation – Lot configuration	i) Proposed as distinct storey. ii) Achieved. iii) Floor heights suitable. iv) Not achieved. v) See key issues.	See key issues

<table>
<tr><th>DCP Clause</th><th>Controls</th><th>Application</th><th>Compliance</th></tr>
<tr><td></td><td>– Flooding
– Lot dimensions
– Impacts on visual amenity, solar access, privacy and views of adjoining properties.</td><td></td><td></td></tr>
<tr><td>3.3</td><td colspan="3">Setbacks</td></tr>
<tr><td>3.3.1</td><td>Front setbacks
i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment.
ii) Corner allotments: Secondary street frontage:
- 900mm for allotments with primary frontage width of less than 7m
- 1500mm for all other sites
– Should align with setbacks of adjoining dwellings
iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</td><td>Avg of adjoining = 10.2 metres.

i)
LGF = 11.4 metres.
GF = 7.68m metres (front balcony)
FF = 9.7 metres.

ii) Not a corner lot.

iii) Pool proposed in front setback. Adjoining properties and further along Mermaid Avenue presently provide pools in their front setback. Acceptable in this regard.

Front setbacks of ground and first floor to be reduced via condition. Extended void and overhang features to be significantly curtailed with minor balcony reduction. View impact and streetscape consistency achieved through this.</td><td>Conditioned</td></tr>
<tr><td>3.3.2</td><td>Side setbacks
<table><tr><th colspan="4">Minimum side setbacks</th></tr><tr><th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr><tr><td>Less than 6m</td><td colspan="3">Merit assessment</td></tr><tr><td>6m to less than 9m</td><td>$0.9m$</td><td>$0.9m$</td><td>$0.9m + (building\ height - 7m)$</td></tr><tr><td>9m to less than 12m</td><td>$0.9m$</td><td>$0.9m + \frac{building\ height - 4.5m}{4}$</td><td>$1.5m + 2\,x\,(building\ height - 7m)$</td></tr><tr><td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{building\ height - 4.5m}{4}$</td><td>$1.8m + 2\,x\,(building\ height - 7m)$</td></tr></table></td><td>See key issues discussion.</td><td>See key issues.</td></tr>
<tr><td>3.3.3</td><td>Rear setbacks
i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.
ii) Provide greater than aforementioned or demonstrate not required, having regard to:</td><td>Minimum = 8m
Proposed = 12m ground floor & 16m to first floor.

ii) Greater provided.</td><td>Yes</td></tr>
</table>

DCP Clause	Controls	Application	Compliance
	- Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts	No predominant rear setback. No unreasonable view impacts anticipated as a result of the rear setback. Privacy and solar access are acceptable (see those assessments). iii) Not proposed. iv) Regular shaped.	
4	**Building design**		
4.1	**General**		
	Respond specifically to the site characteristics and the surrounding natural and built context - i) articulated to enhance streetscape ii) stepping building on sloping site, iii) no side elevation greater than 12m iv) encourage innovative design v) balconies appropriately sized vi) Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension).	i) Suitable. ii) Appropriate with regard to topography. iii) Suitable breaks provided. iv) Design appropriate. v) Rear balconies suitable. Front balcony size to be reduced via condition for front setback improvement. vi) Rooms appropriate.	Suitable
4.5	**Roof design and features**		
	Dormers i) Dormer windows do not dominate ii) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. iii) Multiple dormers consistent iv) Suitable for existing *Clerestory windows and skylights* v) Sympathetic to design of dwelling *Mechanical equipment* vi) Contained within roof form and not visible from street and surrounding properties.	Suitable skylights proposed.	Yes
4.6	**Colours, Materials and Finishes**		
	i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry	i) Schedule provided. Light colours with	Yes

DCP Clause	Controls	Application	Compliance
	at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone	stone, rendering and timber proposed. Minor metal trim works.	
4.7	**Earthworks**		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced *where site has significant slope:* viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	i) 7.6m max cut. ii) Achieved for earthworks. iii) Not proposed. iv) Retaining walls appropriate to the surrounding context. v) See iv). vi) Reasonable as proposed. vii) Rear POS to be generally level. viii) Split level podium proposed. ix) Not proposed.	See key issues for earthworks.
5	**Amenity**		
5.1	**Solar access and overshadowing**		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	North facing windows and POS to receive in excess of minimum requirements.	Yes
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. iii) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a	i) North facing street windows of neighbours to continue to receive adequate solar access. ii) Neighbouring rear POS to continue to receives in excess of minimum requirements.	Yes

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DCP Clause	Controls	Application	Compliance
	minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. iv) Variations may be acceptable subject to a merits assessment with regard to: • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments.	iii) 36 Mermaid Av solar panels to continue to receive adequate solar access. iv) Variation not required.	
5.2	**Energy Efficiency and Natural Ventilation**		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundry. iii) Living rooms contain windows and doors opening to outdoor areas	Suitable openings provided.	Yes
5.3	**Visual Privacy**		
	Windows		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	<u>LGF</u> WLG04 – 1800mm sil. <u>GF</u> WG08 / 13 suitably offset. WG 09 / 10 / 13 – direct view to adjoining windows. Similar FL / window heights. Located at ground level – screening via boundary fence is suitable as privacy interface. <u>First floor</u> All windows to provide	Yes

DCP Clause	Controls	Application	Compliance
		opaque glazing to 1600mm. Acceptable in this regard. ii) appropriate as proposed.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	iii) Balconies to front and rear. iv) Rear balconies to provide screening. v) Not proposed. vi) Terrace area to adjoin lower ground floor. Suitable with regard to streetscape and adjoining dwellings. Columns provided at ground floor balcony to assist in privacy. Balconies otherwise face forward / the street and do not look to private open space of adjoining dwellings.	Yes
5.4	**Acoustic Privacy**		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows	No unreasonable noise sources proposed.	Yes
5.5	**Safety and Security**		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	i) Achieved. ii) Capable of being provided. iii) Achieved. iv) Suitable surveillance achieved.	Yes
5.6	**View Sharing**		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties	See key issues view assessment. Views suitably maintained.	See key issues.

DCP Clause	Controls	Application	Compliance
	iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.		
6	**Car Parking and Access**		
6.1	**Location of Parking Facilities:**		
	All dwellings		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m; and - Consistent with pattern in the street; and - Landscaping provided in the front yard. v) Tandem parking may be considered vi) Avoid long driveways (impermeable surfaces)	i) Single access proposed. Reduced from existing double cross over via condition to restore council land. Existing primary crossover to essentially be replaced. ii) Not feasible. iii) Basement garage sought. iv) 4.5m width entry to basement garage level. v) Not proposed. vi) Suitable with regard to dwelling.	Yes
6.3	**Setbacks of Parking Facilities**		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: - Nil side setback on adjoining property; - Streetscape compatibility; - Safe for drivers and pedestrians; - Amalgamated driveway crossing.	Basement level proposed, integrated into dwelling.	Yes
6.4	**Driveway Configuration**		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	4.5m Existing primary crossover to essentially be replaced.	Yes
6.5	**Garage Configuration**		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or	i) Integrated into	

DCP Clause	Controls	Application	Compliance
	columns): - Single garage – 3m - Double garage – 6m iii) Min. 5.4m length of garage iv) Max. 2.6m wall height and 3m building height (for pitched roof) for detached garages v) Recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) Minimum clearance 2.2m (AS2890.1)	basement level. ii) 4m width. iii) Achieved for parking spaces. iv) Not detached. v) Recessing provided.	Yes
7	**Fencing and Ancillary Development**		
7.1	**General - Fencing**		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	i) Durable materials proposed. ii) Not proposed. iii) Not proposed. iv) only partial side fencing sought.	Yes
7.2	**Front Fencing**		
	i) 1200mm max. (solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) Light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). *Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))* iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	No front fencing proposed.	N/A
7.3	**Side and rear fencing**		
	i) 1800mm maximum height (from existing		

DCP Clause	Controls	Application	Compliance
	ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	Parts of existing fence retained. Amended / new elevation drawings prior to CC to be conditioned to confirm height of new side fencing walls.	Conditioned
7.4	**Outbuildings**		
	i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: – Finished external walls (not requiring maintenance; – No openings facing neighbours lots; and – Maintain adequate solar access to the neighbours dwelling v) For secondary street frontages a nil setback is only permitted if it adjoins a building constructed on the boundary. For detached garages at rear, first floor addition to existing may be considered subject to: – Containing it within the roof form (attic) – Articulating the facades; – Using screen planting to visually soften the outbuilding; – Not being obtrusive when viewed from the adjoining properties; – Maintaining adequate solar access to the adjoining dwellings; and – Maintaining adequate privacy to the adjoining dwellings. vi) Must not be used as a separate business premises.	Not proposed.	N/A
7.5	**Swimming pools and Spas**		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Where pool coping height is above natural ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties. vi) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full	i) Proposed in front setback. Similar to adjoining – suitable in this regard. ii) No trees where pool is proposed. iii) Location consistent with prevailing character. iv) Proposed within front terrace space. Appropriate with	Suitable on surrounding context.

DCP Clause	Controls	Application	Compliance
	length of pool to be provided. Planting to comply with legislation for non-climbable zones. vii) Incorporate screening or planting for privacy as above, unless need to retain view corridors. viii) Position decking to minimise privacy impacts. ix) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	regard to topography. v) To exceed due to EGL and terrace / podium in the front setback. Appropriate in the context of neighbouring development / pools. vi) East elevation privacy screen to be conditioned. Screening also provided. vii) East elevation privacy screen to be conditioned. Smaller planting proposed, no unreasonable view impact anticipated. viii) Lower ground level location and side wall/fencing to provide suitable privacy for decking / terrace area. ix) To be located in basement.	
7.6	**Air conditioning equipment**		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	Proposed in basement.	Yes
7.7	**Communications Dishes and Aerial Antennae**		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: - Located behind the front and below roof ridge; - Minimum 900mm side and rear setback and - Avoid loss of views or outlook amenity iii) Max. 2.7m high freestanding dishes (existing).	Not proposed.	N/A
7.8	**Clothes Drying Facilities**		
	i) Located behind the front alignment and not be prominently visible from the street	Capable of being provided in rear yard.	Yes
7.9	**Utility Connections**		
	If power pole is within 15m of site (on same		

DCP Clause	Controls	Application	Compliance
	side of street), applicant must meet full cost for Ausgrid to relocate.	See engineering referral.	See engineering referral.

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Application	Compliance
3.2	**Vehicle Parking Rates**		
	1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed.	Two spaces proposed.	Yes

3.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Application	Compliance
	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) Outbuildings and ancillary structures integrated 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.	i) Satisfied – visual presentation is appropriate with regard to the surrounding area. ii) Not proposed. iii) Proposed. iv) Not proposed. v) Proposed. vi) Plant species suitable. vii) Provided – net increase. viii) Pool proposed consistent with surrounding dwellings. ix) not proposed. x) No retaining walls.	Yes

Responsible officer: Dean Lidis, Environmental Planning Officer

File Reference: DA/189/2026

D25/26

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Draft Development Consent Conditions

Folder /DA No:	DA/189/2026
Property:	34 Mermaid Avenue, MAROUBRA NSW 2035
Proposal:	Demolition of existing building/structures and construction of a 3-storey dwelling house with basement level comprising car parking, storage and plant rooms and foyer, installation of swimming pool within front setback, associated excavation, ancillary and landscaping works.
Recommendation:	Approval

GENERAL CONDITIONS

Condition

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

Plan / Drawing	Drawn by	Dated	Received by Council
Demolition Plan DA-011 Rev C	EMK Architects	TBA	14/04/2026
Proposed Site Plan DA-013 Rev C	EMK Architects	TBA	14/04/2026
Floor Plan – Basement DA-200 Rev C	EMK Architects	TBA	14/04/2026
Floor Plan – Lower Ground DA-201 Rev C	EMK Architects	TBA	14/04/2026
Floor Plan – Ground Floor DA-210 Rev C	EMK Architects	TBA	14/04/2026
Floor Plan – Level 01 DA-211 Rev D	EMK Architects	21/04/2026	21/04/2026
Floor Plan – Roof DA-220 Rev C	EMK Architects	TBA	14/04/2026
Elevations – Sheet 1 DA-301 Rev C	EMK Architects	TBA	14/04/2026
Elevations – Sheet 2 DA-302 Rev C	EMK Architects	14/04/2026	21/04/2026
Sections Sheet 1 - DA-401 Rev C	EMK Architects	TBA	14/04/2026
Sections Sheet 2 - DA-402 Rev C	EMK Architects	TBA	14/04/2026
Sections Sheet 3 – DA-403 Rev C	EMK Architects	TBA	14/04/2026
Window Schedule and BASIX DA-700 Rev C	EMK Architects	TBA	14/04/2026
External Finishes Schedule DA-750 Rev C	EMK Architects	TBA	14/04/2026

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Condition

Site Plan 01 V4	Exterior Architecture	12/02/2026	20/02/2026
Planting Plan 03 V4	Exterior Architecture	12/02/2026	20/02/2026
Planting Plan 04 V4	Exterior Architecture	12/02/2026	20/02/2026
Notes 05 V4	Exterior Architecture	12/02/2026	20/02/2026

BASIX Certificate No.	***Dated***	***Received by Council***
1830728S	29 January 2026	20 February 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. **Amendment of Plans & Documentation**
The approved plans and documents must be amended in accordance with the following requirements:

a. The front setback of the ground and first floor balcony must be reduced so that no part protrudes forward of the orange marked line which crosses from 32 to 36 Mermaid Avenue.

b. Amended elevation drawings are to be provided which clearly indicate new side walls proposed and their height as well as existing fencing to be retained. New wall must not exceed 1.8 metres from existing ground level.

c. The landscape plans prepared by Exterior Architecture and approved under Condition 1 are to be amended (as relevant) to be consistent with the built form of the approved drawings prepared by EMK Architects. Planting location and selection is to remain generally consistent. The native schedule must remain at minimum 60%.

d. The height of the rooftop solar panels must not exceed RL52.3.

The above amendments must be provided to and approved by Council's Manager Development Assessment prior to the issue of a construction certificate.

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

BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

3. **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.

4. **External Colours, Materials & Finishes**
The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules approved under Condition 1.

Condition Reason: To ensure colours, materials and finishes are appropriate and

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	Condition
	compatible with surrounding development.
5.	**Section 7.12 Development Contributions** In accordance with the applicable Randwick City Council S7.12 Development Contributions Plan, based on the development cost of $3,320,981 the following applicable monetary levy must be paid to Council: $33,209.81. 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.
6.	**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.
7.	**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*: • $4000.00 - 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

	Condition

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.

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

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

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

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

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

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

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

9. **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.

10. **Building Code of Australia**
Access and facilities for people with disabilities must be provided to new building

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	Condition
	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.
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: 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. Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings. 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. Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work. 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.	**Building Code of Australia – Swimming Pools** Swimming Pools and Spa Pools are to be designed and installed in accordance

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	Condition

with the requirements of the *Building Code of Australia* and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools.

Details of compliance are to be provided in the Construction Certificate.

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.

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.

Condition Reason: To ensure compliance with relevant legislation and standards, and ensure the safety of the pool/spa area.

14. **Swimming Pool Safety**

Swimming pools are to be designed, installed and operated in accordance with the following general requirements:

- Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation.
- Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance.
- Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems.
- Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.

Condition Reason: To minimise the impact of the pool on adjoining properties and to ensure the safety of the pool/spa area.

15. **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 as follows:

Pedestrian Entrance	**Western Edge**	**RL 38.15m AHD**
	Eastern Edge	**RL 38.15m AHD**
Driveway Entrance	**Western Edge**	**RL 38.15m AHD**
	Eastern Edge	**RL 38.35m AHD-**

Refer to submitted Survey Plan by Beveridge Williams dated 8.11.24 for Reference Mark / Benchmark

	Condition
	The design alignment levels at the property boundary as issued by Council 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. Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.
16.	**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 **$994.00** 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.
17.	**Internal Basement Slab Design** Prior to the issuing of a Construction Certificate the plans are to be amended for the basement floor plan to show the internal slab at the garage door entrance and pedestrian gate entrance (setback from the front boundary line) at RL 38.35m AHD. The internal slab from the roller garage door entrance can ramp back up into the basement garage level of RL 38.50m AHD. Condition Reason: To ensure all parking and driveway works are designed and constructed in accordance with the relevant requirements.
18.	**Stormwater Drainage** Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier. The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval. Condition Reason: To control and manage stormwater run-off so as not to adversely impact the development, neighbouring properties and Council's stormwater assets.
19.	**Stormwater Drainage** A site stormwater drainage system is to be provided in accordance with the following requirements (as applicable): a) The stormwater drainage system must be designed and constructed to satisfy the relevant requirements in the Building Code of Australia, b) Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX

Condition

Certificate for the dwelling,

c) The overflow from the rainwater tank and other surface stormwater must be directed to a suitably designed sediment/silt arrestor pit which drains to a suitably designed infiltration area having a minimum base area of 5m²,

d) A stormwater overflow pipe (located a minimum 50mm above the outlet to the infiltration area) is to be provided from the sediment/silt arrestor pit to drain to Council's kerb and gutter in front of the site,

e) The design and construction of the infiltration areas must be appropriate having regard to the site and ground characteristics.

Should the site or ground conditions preclude the construction of an infiltration pit (i.e. due to rock being located within 300mm of the base of the infiltration area), an infiltration pit need not be provided and the stormwater is to be discharged directly to the kerb and gutter via a sediment/silt arrestor pit.

f) 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.

g) 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.

h) Details of the design and construction of the stormwater drainage system, sediment site arrestor pit/s and infiltration areas must be submitted to and approved by the Principal Certifier with the Construction Certificate and all works are to be carried to the satisfaction of the Principal Certifier.

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

20. **Stormwater Drainage**

Sediment/silt arrestor pit/s are to be provided within the site at or near the street boundary prior to stormwater being discharged from the site or into any infiltration areas. The sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements, to the satisfaction of the Principal Certifier:

- The base of the pit located a minimum 300mm under the invert level of the outlet pipe.
- The grate is to be a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A minimum of 4 x 90 mm diameter weep holes 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.

	Condition

- A galvanised heavy-duty screen located over the outlet pipe (Mascot GMS Multi-purpose filter screen or similar)
- A child proof and corrosion resistant fastening system for the access grate (spring loaded j-bolts or similar).
- The inlet pipeline located on the side of the pit so that the stormwater will discharge across the face of the screen.
- A sign adjacent to this pit stating that:

  "This sediment/silt arrester pit shall be regularly inspected and cleaned."

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

21. **Stormwater Drainage**

The Infiltration area is required to be constructed generally in accordance with the following requirements:-

- Provision of a minimum 300 mm of soil cover (600 mm where the pit is located under a garden/landscaped area).
- Located a minimum of 3.0 metres from any structures (note: this set back 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) and 2.1 metres from the adjacent side or rear boundaries.
- Having a minimum base infiltration area of 5.0 m2 with a suitable means of dispersing stormwater over the area of infiltration.
- Locating the outlet from the silt arrestor pit to the infiltration area at least 50 mm below the outlet from the silt arrestor pit to the kerb and gutter.

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

22. **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

23. **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)

Condition

Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

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

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

c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council must be notified accordingly (in writing); and

d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and

e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

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

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

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

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

25. **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.

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	Condition

26. **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.

27. **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.

28. **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

Condition

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.

29. **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.

30. **Demolition & Construction Waste**

A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development, and be approved by Council's Lead specialist Strategic Waste prior to commencement of any works on the site.

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP 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 or contact Council Development Engineer on 9093-6881/9093-6923.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

Condition Reason: To ensure demolition and construction waste is disposed of appropriately.

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	Condition

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, including site deliveries (except as detailed below)	• 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	• 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.

	Condition

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

35. **Treatment of Site Fencing and Hoardings**
1. Any site hoarding or fencing, including temporary, construction, perimeter or safety fencing, are to incorporate artwork or historic images of the local area to improve the visual amenity of the site during demolition and for the interim period until construction is completed on the site.

2. Details of artwork and/or historic images, and of the fencing/hoarding, are to be submitted to and approved by Council's Manager Development Assessment prior to the commencement of any works on site including demolition.

3. The approved artwork/historic images are to remain on the fencing/hoarding throughout demolition works, and until such time as the construction works including the future development on site has been fully completed.

4. Any graffiti on the hoarding/fencing shall be removed at the expense of and by the developer/owner.

Condition Reason: To ensure public safety during site works and construction, and to improve public amenity, including visual amenity, during construction.

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	Condition
36.	**Overhead Hoardings** An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if: • 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. Condition Reason: To ensure proper management of public land and ensure public safety during site works and construction.
37.	**Public Safety & Site Management** Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times: a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines. g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident. h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. 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.

	Condition

j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

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

38. **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.

39. **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.

40. **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.

41. **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

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	Condition
	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 reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.
42.	**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.
43.	**Survey Report** A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building: • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council. Condition Reason: To ensure compliance with approved plans.
44.	**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 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. • Relevant Road / Asset Opening Permit fees, repair 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. 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

	Condition
	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.
45.	**Tree Management** Approval is granted for removal of all existing vegetation within the site due to their small size and insignificance, as well as to accommodate the proposed works as shown, subject to full implementation of the approved landscaping. Condition Reason: To ensure residential amenity and permit appropriate landscaping to be provided.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
46.	**Occupation Certificate Requirements** An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
47.	**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: (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.
48.	**Fire Safety Certificate** A single and complete *Fire Safety Certificate*, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation*

	Condition
	2021.
	A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy of the *Fire Safety Certificate* and *Fire Safety Schedule* must also be forwarded to Fire and Rescue NSW.
	Condition Reason: Statutory requirement. To ensure compliance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, and that adequate provision is made for fire safety in the premises for building occupant safety.
49.	**Structural Certification** A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council.
	Condition Reason: To ensure the structural adequacy of the building and works.
50.	**Sydney Water Certification** A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site *www.sydneywater.com.au* > *Building and developing* > *Developing your Land* > *Water Servicing Coordinator* or telephone 13 20 92.
	Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.
	The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.
	Condition Reason: To ensure the development satisfies Sydney Water requirements.
51.	**BASIX Requirements** In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.
	Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate.
	Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.
52.	**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

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	Condition

an occupation 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 properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.

53. **Swimming Pool Safety**
Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* 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.

54. **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 *Swimming Pools Regulation 2018*, 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.

55. **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 *Swimming Pools Act 1992*. 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.

56. **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:

a) Construct a new 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/s and layback/s and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specifications and requirements.

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

57. **Council's Infrastructure, Vehicular Crossings & Road Openings**
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

	Condition
	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.
58.	**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 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details. b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval. c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing. Condition Reason: To ensure works on Council property are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
59.	**Stormwater Drainage** The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier. Condition Reason: To control and manage stormwater run-off so as not to adversely impact the development, neighbouring properties and Council's stormwater assets.
60.	**Landscape** The landscaping provisions shall be installed in accordance with the approved documents under Condition 1 (and as modified by Condition 2) prior to the issue of a final occupation certificate and landscaping is to be maintained in accordance with the approved plans. Condition Reason: To ensure landscaping is maintained.

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OCCUPATION AND ONGOING USE

	Condition
61.	**Use of parking spaces** 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. 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.
62.	**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.
63.	**Basement rooms** All basement rooms must only be used for non-habitable purposes. Condition Reason: To ensure non-habitable rooms are used as approved.

DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES

	Condition
64.	**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): • 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

	Condition
	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
65.	**Demolition Work** 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. Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements: • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the Protection of the Environment Operations Act 1997 and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works. Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request. *A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.* Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.

Development Application Report No. D26/26

Subject: 38 High Street, Randwick (DA/36/2026)

D26/26

Executive Summary

Proposal:	Concept Development Application for a mixed-use development comprising a 7-storey co-living housing development to the High Street frontage and two 8-storey residential flat buildings to the rear, incorporating infill affordable housing, identification of two levels of basement parking, communal open space and associated landscaping and civil works.
Ward:	West Ward
Applicant:	CPDM High St Development DM Pty Ltd
Owner:	Foundation For Education & Training - Randwick
Cost of works:	$59,222,644.00
Reason for referral:	The development contravenes the development standards for building height, floor space ratio and number of storeys by more than 10%; and 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.

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/36/2026 for the concept development application for a mixed-use development comprising a 7-storey co-living housing development to the High Street frontage and two 8-storey residential flat buildings to the rear, incorporating infill affordable housing, identification of two levels of basement parking, communal open space and associated landscaping and civil works, at No. 38 High Street Randwick, for the following reasons:

1. Pursuant to clause 2.3 of RLEP 2012, the proposed southern building does not have an applicable residential accommodation land use classification in accordance with the Dictionary in the RLEP 2012 or Standard Instrument, and is therefore prohibited development.

2. 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 provide for the housing needs of the community, does not recognise the desirable elements of the existing streetscape and built form, fails to protect the amenity of residents, and does not encourage housing affordability.

3. Pursuant to section 16(3) of SEPP (Housing) 2021 and clause 4.3 of RLEP 2012, the proposed variations to the respective building height development standards are not supported as the Applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standard.

4. Pursuant to sections 16(1) and 28(2) of SEPP (Housing) 2021, the proposed variations to the respective floor space ratio development standards are not supported as the Applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standard.

5. Pursuant to section 176(2) of the SEPP (Housing) 2021, the proposed variation to the number of storeys development standard is not supported as the Applicant has failed to demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standard.

6. Pursuant to sections 20(3) and 69(2) of the SEPP (Housing) 2021, the proposed development is incompatible with the desired future character of the precinct.

7. Pursuant to section 47(2) of the SEPP (Housing) 2021, the Applicant has failed to provide Council with relevant documentation to determine whether the proposed demolition of the existing boarding house will reduce the amount of affordable housing in the area and if the existing boarding house is financially viable.

8. 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 design was inadequate for the proposed building. In addition, the development fails to demonstrate consistency with the following design criteria of the ADG:
    a. Section 3D ‘Communal and Public Open Space’.
    b. Section 3E ‘Deep Soil Zone’.
    c. Section 3F ‘Visual Privacy’.
    d. Section 4A ‘Solar and Daylight Access’.
    e. Section 4B ‘Natural Ventilation’.
    f. Section 4E ‘Private Open Space and Balconies’.
    g. Section 4F ‘Common Circulation and Spaces’.

9. Pursuant to section 176(2) of the SEPP (Housing) 2021, the proposed development fails to provide sufficient landscaping to support canopy trees.

10. Pursuant to section 4.6 of the SEPP (Resilience and Hazards) 2021, the applicant has failed to sufficiently demonstrate whether the land is contaminated.

11. Pursuant to clause 6.2 of RLEP 2012, the proposed development does not adequately ensure that earthworks will not have a detrimental impact on neighbouring uses and features of the surrounding land.

12. Pursuant to clause 6.4 of RLEP 2012, the proposed development may adversely affect stormwater management.

13. Pursuant to clause 6.11 of RLEP 2012, the proposed development does not exhibit design excellence.

14. Pursuant to section 4.23 of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with the relevant provisions of clause 6.12 of RLEP 2012.

15. 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
    b. Part C2: Medium Density Residential

16. Pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the suitability of the site for the proposed development has not been adequately demonstrated.

17. 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.

18. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to GFA calculation plans, indicative building layouts plans, arborist report, geotechnical investigation report, photomontage, design analysis, modelling, construction traffic management, and compliance with the applicable amenity standards in the SEPP (Housing) 2021.

Attachment/s:

1. Clause 4.6 Variation Request - Co-Living Height - 36-38 High Street Randwick
2. Clause 4.6 Variation Request - RFB Height - 36-38 High Street Randwick
3. Clause 4.6 Variation Request - Co-Living FSR - 36-38 High Street Randwick
4. Clause 4.6 Variation Request - RFB FSR - 36-38 High Street Randwick

D26/26

D26/26



Subject Site

Submissions received

North

Locality Plan

N.b. One (1) submission was received during the public exhibition period from 47 Wansey Road, Randwick.

1. Executive Summary

This report will assess DA/36/2026 (*the Application)* for 38 High Street, Randwick (*the Subject Site)* against the relevant heads of consideration under Section 4.15 of *Environmental Planning & Assessment Act 1979 (the Act)*.

The application seeks consent for a concept development application for a mixed-use development comprising a 7-storey co-living housing development to the High Street frontage and two 8-storey residential flat buildings to the rear, incorporating infill affordable housing, identification of two levels of basement parking, communal open space and associated landscaping and civil works

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

- The development contravenes the development standard for building height by more than 10% under Chapter 2 of Housing SEPP 2021 and Clause 4.3 of RLEP 2012.
- The development contravenes the development standard for floor space ratio by more than 10% under Chapter 3 and 6 of Housing SEPP 2021.
- The development contravenes the development standard for number of storeys by more than 10% under Chapter 6 of Housing SEPP 2021.
- The development is subject to Chapter 4 ‘Design of residential apartment development’ of the Housing SEPP 2021 as the proposed development is for the erection of a new building that is 3 or more storeys and contains at least 4 dwellings.

Pursuant to Section 4.23 of the Act, consent for the concept development application is sought as an alternative to requiring a full site-specific DCP for the subject block bound by Arthur Street, Botany Street, High Street and Wansey Road (of which includes the subject site), as required by Clause 6.12 of the RLEP 2012.

In terms of the residential flat building component of the development, the proposal seeks to benefit from the recently in-force 'Low and Mid Rise Housing' (LMR) provisions of the Housing SEPP that allow for the subject site, being within the outer 'LMR' area, to have a building height of 17.5m (and up to 4 storey) and FSR of 1.5:1, respectively. In addition, the proposal seeks to use the 'In-fill Affordable Housing' provisions of the Housing SEPP to receive a further building height and FSR bonus in providing floor area for an affordable housing component.

In terms of the co-living housing component of the development, the proposal is subject to the provision under Part 3 under Chapter 3 of the Housing SEPP. It is noted that the co-living housing component of the proposal does not benefit from the uplift provisions of the LMR.

Council notes that on 3 March 2026, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Council's deemed refusal of the development application.

The key issues associated with the proposal relate to matters related to a concept development application, building envelope and massing, building separation, internal residential amenity, neighbouring residential amenity, desired future character, car parking, tree canopy, construction traffic management, and insufficient information. The extent of issues is evident throughout this report, including many jurisdictional matters of consideration that the Applicant has failed to satisfy in their application.

As such, the development application is recommended for refusal.

2. Site Description and Locality

The subject site is legally described as Lot 1 DP 1256678 and is known as 38 High Street, Randwick.

The site is an irregular parcel of land separated into largely two (2) areas, being the larger southern portion of the site with a southern boundary fronting High Street of 29.37m, an eastern side boundary of 72.765m, and a western side boundary of 72.68m, and the smaller northern portion of the site with northern boundary of 26.105m. The two areas are connected by a handle with a width of 8.10m.

The site has a total area of 2,767sqm. The site is relatively flat, with rises from south to north by approximately 2m (RL 57.07 AHD to RL 58.92 AHD).

The site contains a Sydney Water sewer main to both the larger southern and smaller northern portion of the site.

The larger southern portion of the site is currently occupied by three (3) 2-storey buildings consisting of Creston College (a 23-room private boarding house), Kenvale Teaching College and Kenvale Training College. The smaller northern portion of the site comprises of an at-grade hardstand parking area accommodating sixteen (16) parked vehicles. Vehicular access is also provided to the buildings via a driveway within the property boundary. A photograph of the site is provided at Figure 1 below.

The subject site is located on northern side of High Street, between Botany Street to the east and Wansey Road to the west.

To the eastern side of the site is a four (4) storey strata-subdivided residential flat building consisting of eighteen (18) dwellings (42 High Street) and 'Arthur Lane', a parcel of land owned by Council that provides vehicular access to buildings including those fronting High Street to the south (10R Arthur Street – see Figure 3 below). To the western side of the site is a series of residential developments including a two storey, four (4) dwelling residential flat building (34 High Street), a

two-storey dwelling house (47 Wansey Road) and a two-storey six (6) dwelling townhouse development (45 Wansey Road). To the northern side of the site is a two storey residential flat building consisting of six (6) dwellings (10 Arthur Street).

The site is located on High Street, which is a State classified road that facilitates the 'L2 Randwick' Light Rail line. The 'UNSW High Street' Station is located opposite the subject site. No vehicular access to the site is provided via High Street. On the southern side of High Street is the University of NSW Randwick Campus, specifically the Lowry Cancer Research Centre (C25). See Figure 4 below.

The site is within 800m walking distance of 'Randwick town centre and light rail station', which is within Zone E2 'Commercial Centre'. As such, it is considered within the 'low and mid rise housing outer area' in accordance with Chapter 6 of the Housing SEPP.

The wider context of the area encompasses the Randwick Health & Innovation Precinct of the Prince of Wales Hospital and University of NSW. In addition, to the west of the block of the subject site is the Randwick Racecourse.

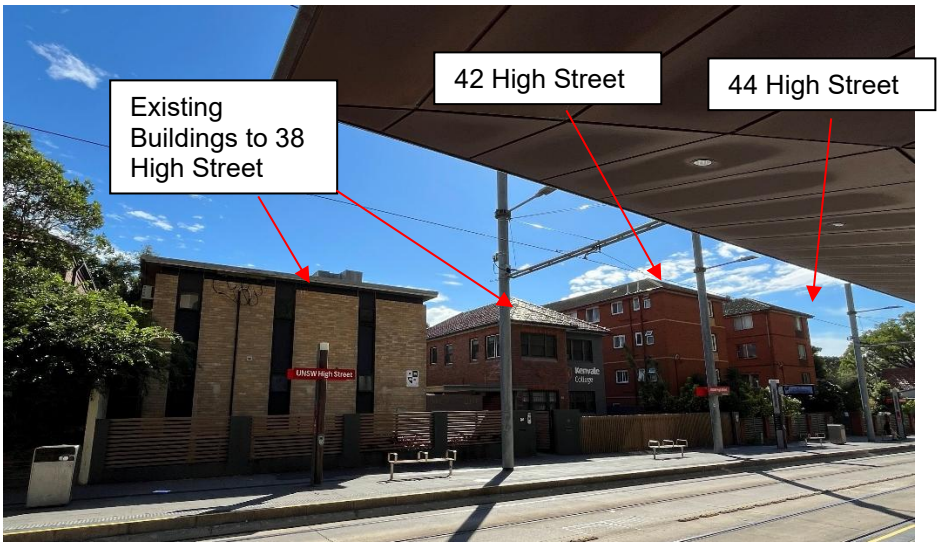


Figure 1: Photo of the subject site *(Source: Randwick City Council)*

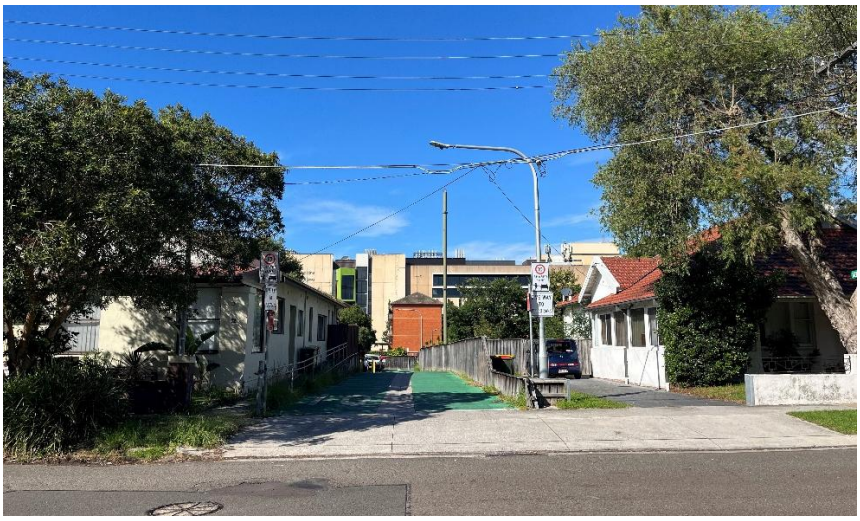


Figure 2: Photo of the Council laneway to Arthur Street facing east towards the subject site *(Source: Randwick City Council)*



Figure 3: Photo of the 'UNSW High Street' Station and corridor *(Source: Randwick City Council)*



Figure 4: Aerial view of subject site *(Source: Nearmap)*

3. Relevant History

Creston College

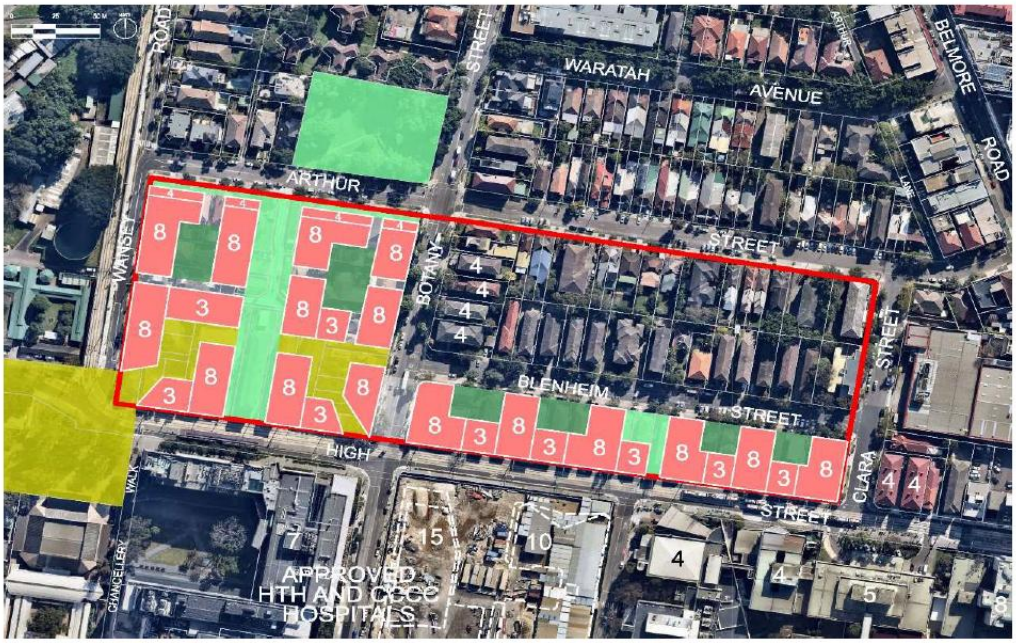
On 26 September 1969, Building Application No. BA/981/1969 was granted consent for a 'residential college'. The Council report refers to the use as a 'hostel', of which would be most appropriately defined under the current instrument as a 'boarding house'. The building is known as "Creston College".

On 22 October 2003, Development Application No. DA/792/2003 was granted consent for 'alterations to existing student residential accommodation including a new passenger lift, new balcony and interior upgrading'. Approved plans show a 23 private room boarding house.

Randwick Comprehensive Planning Proposal

On 1 June 2021, the draft Randwick Comprehensive Planning Proposal ("RCPP") was reported to the Extraordinary Council Meeting for endorsement. The draft RCPP included the 'Arthur Street Housing Investigation Area' which included the subject site and block. The RCPP sought to increase

the maximum building height from 9.5m to 26m, and maximum FSR from 0.75:1 to 3:1 for the subject site and block. The draft RCPP was accompanied by the 'Arthur Street Housing Investigation Area Urban Designer Report' which included urban analysis, block plans, character statements and considerations to support the proposed changes in building height and FSR.



Map 18: Proposed built form and height diagram (heights shown in storeys)

Figure 5: Proposed concept plan for the Arthur Street Housing Investigation Area in the Urban Designer Report (Source: Randwick City Council)

On 1 June 2021, the Council endorsed the exhibition of the draft RCPP which included the 'Arthur Street Housing Investigation Area'. Between 31 May to 12 July 2022, the draft RCPP and supporting documents were placed on public exhibition.

On 30 August 2022, the draft RCPP, supporting documents and community consultation report was reported to the Extraordinary Council Meeting for endorsement. The community consultation report included the recommendation not to proceed with the proposed maximum building height and FSR controls for the block bound by Arthur Street, Botany Street, High Street and Wansey Road (of which includes the subject site). This was based on the request from UNSW, who is the majority landowner in the block, to have the changes deferred to allow for further investigation around its strategic development potential. The Council report included the following comments:

"The urban design success of the western block of the Arthur Street HIA largely depends on the consolidation of lots, including the UNSW-owned land. As the UNSW as the major landowner have advised that they are unable to support the outcomes for the western block, it is appropriate not to proceed with its inclusion to allow for further investigation into the longer term strategic opportunities. Having a greater mix of uses aligns with the objective of creating a leading research, educational & innovation district. If the proposed residential zoning and change to the development standards proceed and there is not a substantial consolidation of the remaining land with that of the UNSW, it may result in further fragmentation with new apartment or co-living development occurring on remnant parcels. This would have the effect of limiting the potential for a mixed use zoning at a later date."

On 30 August 2022, the Council endorsed the changes to part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to the 'Arthur Street Housing Investigation Area', including removal of the western portion of the area from the proposed uplift. See Figure 6 below the changes.

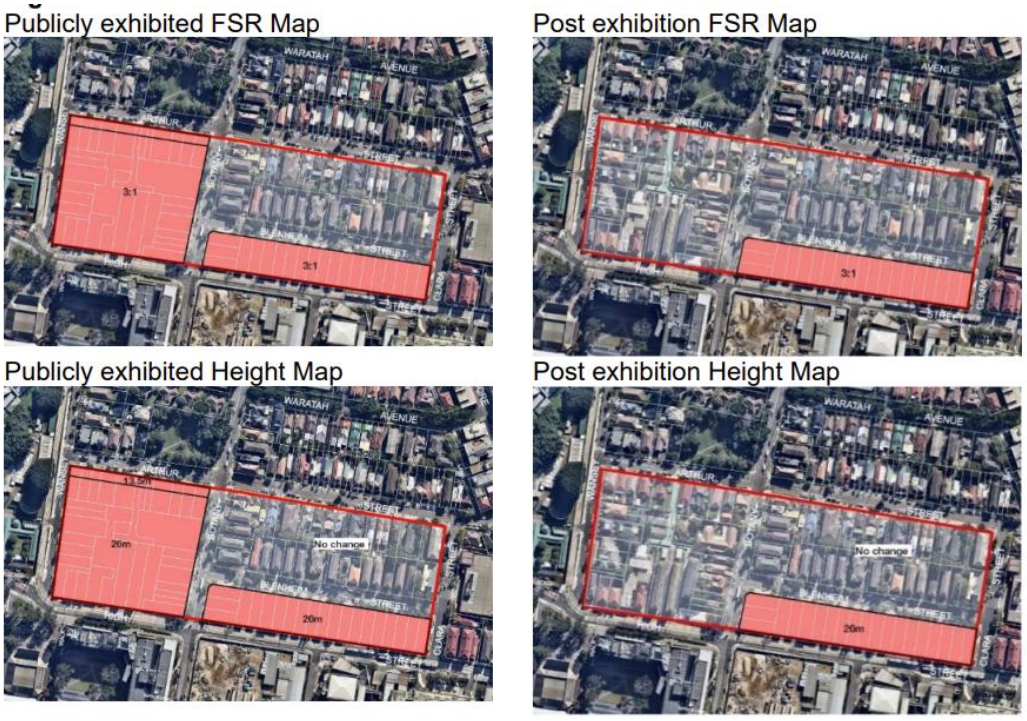


Figure 6: Plans showing the proposed changes in FSR and HoB development standards for Arthur Street Housing Investigation Area (Source: Randwick City Council)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the RLEP amendment (amendment No. 9) updating the RLEP.

On 1 September 2023, the updated RLEP commenced, including the adoption of the increased building height and FSR to the eastern part of the 'Arthur Street Housing Investigation Area' only.

Low and Mid-Rise Housing Policy

On 28 February 2025, the NSW Government implemented new reforms to amend the SEPP Housing 2021, that introduces new planning controls to allow terraces, townhouses, mid-rise apartments and shop-top housing within 800m of identified town centres and train or light rail stations. This includes the Randwick Junction town centre.

Pre-Lodgment Application No. PL/35/2025

On 14 November 2025, the Applicant lodged a pre-lodgement application with Council for the concept development application for an 8 storey mixed-use development comprising of part co-living housing and a residential flat building above two levels of basement car parking. At the time of the authorising of this report, the application is still under assessment by the Respondent, and no formal advice has been provided to the Applicant on this application.

4. Proposal

Council is in receipt of a development application seeking consent for a concept development application for a mixed-use development comprising a 7-storey co-living housing development to the High Street frontage and two 8-storey residential flat buildings to the rear, incorporating infill affordable housing, identification of two levels of basement parking, communal open space and associated landscaping and civil works.

Specific details of the development application are as follows:

- Consent of a concept development application in accordance with Division 4.4 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") for the following concept proposal:
    - Construction of a 7-storey co-living housing.

- Construction of two (2) 8-storey residential flat building components as separate buildings incorporating in-fill affordable housing.
- A common basement parking across the development for all three (3) buildings.
- Combined communal open space for the co-living housing and residential flat building land uses,
- Associated landscaping and civil works across the site.

- As a concept development application, no physical works are proposed with this application.

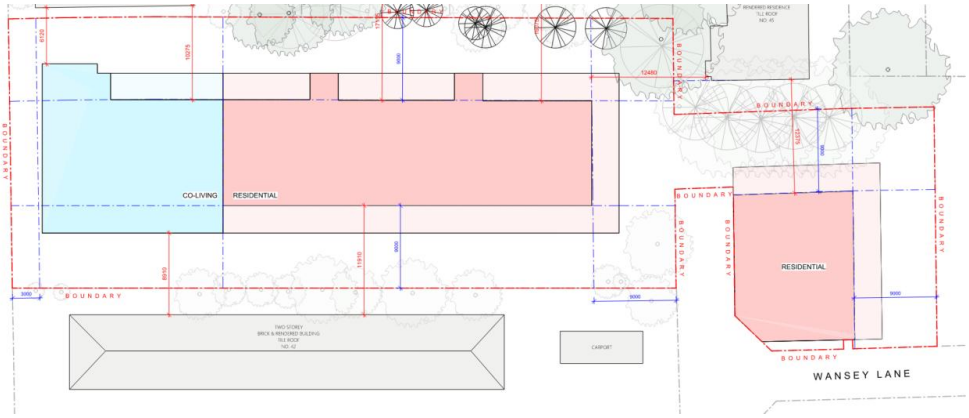


Figure 7: Proposed level 4-7 – 38 High Street Randwick (*Source: WMK Architecture*)

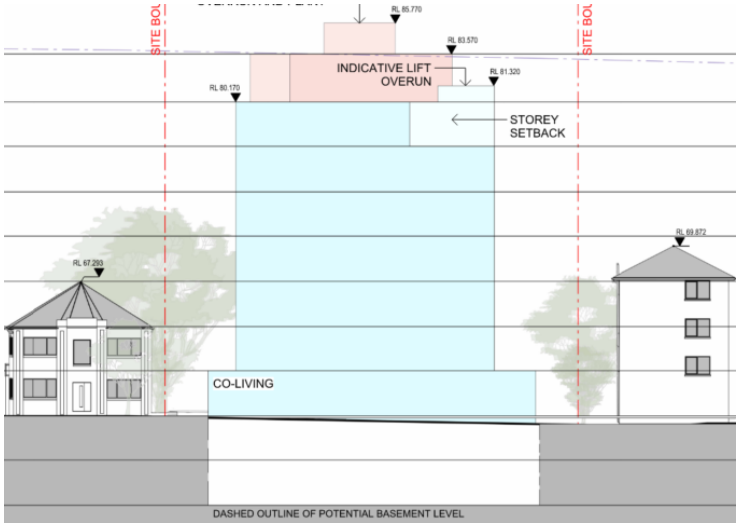


Figure 8: Proposed High Street elevation – 38 High Street Randwick (*Source: WMK Architecture*)

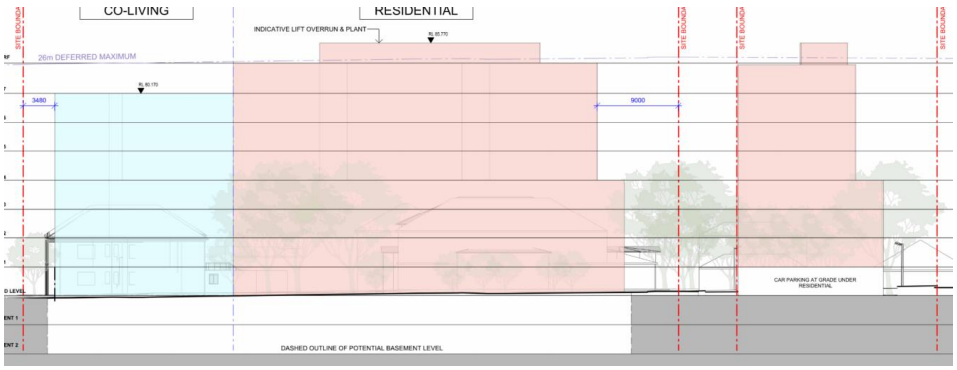


Figure 9: Proposed long section – 38 High Street Randwick (*Source: WMK Architecture*)

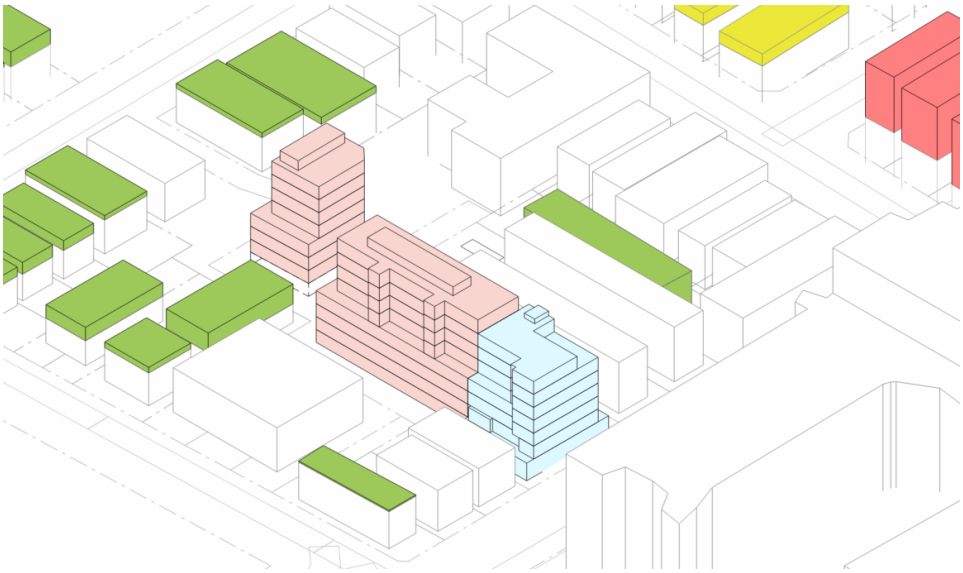


Figure 10: Proposed 3D – 38 High Street Randwick (*Source: WMK Architecture*)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development between 22 May 2025 and 05 June 2025 for 14 days, in accordance with the Randwick Community Engagement Strategy.

A total of one (1) submission was received during this period from the following property:

- 47 Wansey Road, Randwick.

The submissions by way of objection have been paraphrased and summarised below:

Issue	Comment
Visual Privacy Impacts -Development results in adverse impacts on visual privacy, direct views into the dwelling backyard. Impacts upon amenity and liveability.	Noted. However, the development largely complies with ADG separation requirements to the western boundary adjoining 47 Wansey Road. Mitigation of privacy impact to 47 Wansey Road to be demonstrated in a subsequent detailed DA, should the concept DA have been supported.
Side Setbacks and Separation -Plans show a setback distance of 12.96m between the building and dwelling at 47 Wansey Road. This meets the DCP requirement. -This distance needs to be increased, as any future improvements and development potential on 47 Wansey Road will be impacted.	Noted. Council cannot impose more onerous controls based on the potential development potential impacts to another dwelling. That being said, Council is concerned that the proposed concept DA has not adequately demonstrated the redevelopment potential of 47 Wansey Road, demonstrating adequate separation and amenity where compliance with ADG separation design criteria have not been demonstrated, See Key Issues for a detailed assessment.

Issue	Comment

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

The aims of Chapter 2 are:

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

As a concept DA, the proposed development does not involve any physical works or removal of any trees. That being said, the impact of the development on existing vegetation within the site and to adjoining sites needs to considered.

Council's Development Landscaping Officer notes that no Arborist Report has been provided but based on the proposed footprints & setbacks, and also assuming that the Basement Level/s would be contained within/beneath the above ground parts of the building/s, as is shown on the Section & Elevation Plan (dwg DA500), it appears that most of the existing established trees both within/around the perimeter of the development site as well as on neighbouring properties, close to the common boundaries could be retained in-situ, which would be a favourable outcome in such a highly urbanised setting.

As such, the proposal achieves the relevant objectives and provisions under Chapter 2. See Appendix 1 for detailed Development Landscaping comments.

6.2. SEPP (Housing) 2021

Chapter 2 'Affordable housing'

Division 1 'In-fill affordable housing' in Part 2 'Development for affordable housing'

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

The propsoed development fails to comply with the numerical development standards in relation to Building Height and Floor Space Ratio. See further assessment throughout this report and in the Key Issues part of the report below. Appendix 3 for a detailed assessment against each relevant clause of the in-fill affordable housing provisions of the Housing SEPP.

Desired Future Character

Section 20(3) outlines that 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 acknowledges that whilst the area is a within a precinct undergoing transition as the site is located within the 'low and mid rise outer area' which allows for 4 storey residenital flat buildings, the development is incompatible the desired future character of the precinct. See Key Issues for a detailed assessment.

Part 3 'Retention of existing affordable rental housing' in Part 2 'Development for affordable housing'

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

The subject site is currently occupied by a twenty-three (23) room boarding house, known as 'Creston College'. Consent was granted on 26 September 1969 for a 'residential college'. The Council report refers to the use as a 'hostel', of which would be most appropriately defined under the current instrument as a 'boarding house'.

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

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

The subject building is a lawful boarding house that is currently operating as such. Therefore, Council can confirm the subject building is defined as a low-rental residential building'.

Clause 46 notes that this part applies to a low-rental residential building in the Eastern Harbour City. Council confirms that the subject site is located within the Eastern Harbour City.

Clause 47 relates to development for the purpose of demolishing the building, in relation to a building to which this Part applies, is permitted with development consent. In accordance with clause 47(1), Council confirms that the proposal seeks to demolish the exisitng boarding house building.

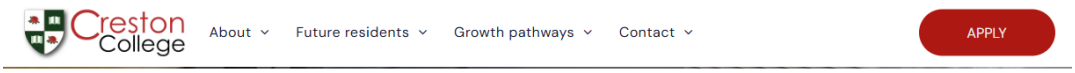
In accordance with clause 47(2), the consent authority must take into account the *Guidelines for the Retention of Existing Affordable Rental Housing* (The Guide), published by the Department in October 2009 and several considerations in determining whether to grant development consent.

The Applicant has failed to acknowledge these provisions in their application including to demonstrate that such provisions are either not applicable or how they seek to address the matters of consideration required under this proposal. It is noted whilst no physical works are proposed under this concept DA, should it be found that the boarding house is financially viable to operate, then consent may not be appropriate to be granted for the demoliton of this building, of which is required to faciliate the subejct concept development application.

As such, the following considerations are detailed below with comments from Council:

(a) whether the development will reduce the amount of affordable housing in the area,

> Assessing officer's comment:
> The applicant has failed to provide Council with documentation outlining the rental rate that each boarding house room has been rented out for over the last 5 years. Council has reviewed the website of Creston College and was able to confirm the 2026 Fee Schedule for the boarding house. See Figure 11 below.



2026 FEE SCHEDULE

Standard room shared bathroom: $530
Standard room private shower: $570

ANNUAL FEES

ANNUAL FEES	RATE
Annual house fee	$150
Internet Levy	$50

FIRST YEAR FEES

FIRST YEARS	RATE
Registration fee	$100
Orientation Week fee	$530 / $570 (depending on room type)
Security bond (refundable)	$750
Printing/photocopy deposit	$50

Figure 11: 2026 Fee Schedule for Creston College (*Source: Creston College*)

Without information and detailed fee schedules for the last 5 years, Council cannot take into account whether the proposed change of use of the existing boarding house into a hotel will reduce the amount of affordable housing in the area. However, the above rents are considered on the lower side of rentals within the LGA.

(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,

In accordance with clause 47(3), sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.

The average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, was 2.1% in January 2026 (when the DA was lodged). Therefore, Council can confirm that there is currently not enough available sufficient comparable accommodation to satisfy the demand for accommodation.

(c) whether the development is likely to result in adverse social and economic effects on the general community,

In accordance with The Guide, where the vacancy rate for Sydney is less than 3%, a development proposing a loss of such accommodation is likely to cause adverse social and economic effects on the general community. As noted above, Council cannot confirm whether the development will reduce the amount of affordable housing in the area.

However, the vacancy rate in Sydney for January 2026 is 2.1%. Council is concerned that the loss of the existing boarding house may result in adverse social and economic effects on the general community. Without information as to whether the boarding house rooms are affordable or not, Council cannot make a full and robust assessment of this consideration.

(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,

The applicant has not provided any details as to whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation.

(e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,

Council can confirm from data from the NSW Government's Local Government Housing Kit that:

- The percentage of very low income affordable rental stock in the Randwick LGA is 2%, in comparison to Greater Sydney which is 3.4%.
- The percentage of low income affordable rental stock in the Randwick LGA is 6.7%, in comparison to Greater Sydney which is 17.3%.

Based on this, Council is concerned that the loss of this existing boarding house will adversely contribute to a cumulative loss of affordable housing in the local government area, which is already significantly less than the average of Greater Sydney.

(f) whether the building is structurally sound, including—
(i) the extent to which the building complies with relevant fire safety requirements, and
(ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,

Assessing officer's comment:
Council has not received any confirmation that the building is not structurally sound (N.b. Creston College was subject to upgrade works as approved under DA/792/2003 (as modified)). In addition, Council confirm that the existing building has a current Annual Fire Safety Statement (AFSS), Council Ref No. ESS/37/2005. The current statement is valid until 2/06/2026.

(g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,

Assessing officer's comment:
As noted above, the applicant has failed to provide Council with documentation outlining the rental rate that each boarding house room has been rented out for over the last 5 years. Without this information, Council cannot take into account whether the demolition of the existing boarding house will reduce the amount of affordable housing in the area.

That being said, based on the other matters of consideration above, Council can confirm that:

- There is currently not enough available sufficient comparable accommodation to satisfy the demand for the accommodation.
- That the loss of the boarding house may result in adverse social and economic effects on the general community.
- That the applicant has failed to detail whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation.
- That the loss of the existing boarding house will contribute to a cumulative loss of affordable housing in the local government area.
- That the existing building is structurally sound and has been upgraded to adequately comply with relevant fire safety requirements.

Therefore, Council is concerned that the loss of the existing boarding house would have an impact on affordable housing in the area, and that a monetary contribution may be required from the applicant to potentially account for this loss (subject to the applicant providing documentation regarding the financial viability of the boarding house).

As noted below, Council does not accept that the existing boarding house has been demonstrated as unviable, as the applicant has failed to provide any documentation to support such consideration. Therefore, Council cannot accept, that in this instance, the loss of the existing boarding house is warranted.

(h) for a boarding house—the financial viability of the continued use of the boarding house.

Assessing officer's comment:
The applicant has failed to provide any documentation to support whether the existing boarding house is the financial viability or not, including an assessment based on the methodology outlined in the *Guidelines for Retention of Existing Affordable Rental Housing.*

Conclusion
In accordance with clause 47(2) of the Housing SEPP, Council is unable to determine whether the proposed demolition of the existing boarding house will reduce the amount of affordable housing in the area, as the applicant has failed to provide Council with documentation outlining the rental rate that each boarding house room has been rented out for over the last 5 years. In addition, the applicant has not provided any information to demonstrate that the existing boarding house is not financially viable. Therefore, Council cannot confirm that this clause has been satisfied.

As such, it is recommended that the proposed development application be refused.

Chapter 4 'Design of residential apartment development'

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

The proposed concept development application is subject to the provisions of Chapter 4 in that the proposal comprises of development for the purposes of residential flat building, consisting of the erection of a new residential flat buildings that are 8 storeys in height that will contain at least 4 dwellings (pursuant to section 144 of the Housing SEPP).

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

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

Design Excellence Advisory Panel (DEAP)

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

The DA was referred to the DEAP for advice concerning the design quality of the development. The DEAP has advised that the proposal does not demonstrate or justify how it can deliver significant uplift for this site, nor the ability for Design Excellence in the detailed design.

A summary of the issues is noted below with comments addressing each point raised:

Issue	Comment
1. Context and Neighbourhood Character • The Concept scheme does not indicate how it interacts with or acknowledges the principles of the Randwick HIA concept plan it refers too, or the Draft DCP for the HIA • A sufficient context analysis was not provided to support the Concept DA assumptions and outcome.	Agreed. Agreed, in particular, there is a lack of detail of site amalgamation of those sites owned by UNSW.
2. Built Form and Scale • The Concept DA does not demonstrate how it might achieve ADG compliances or how it would	Agreed, see Key Issues for details below.

Issue	Comment
affect or be affected by neighbouring contextual development. • The massing is large and continuous to the southern building and does not indicate how it defines public domain, contributes to streetscape characteristics, private or public amenity, pedestrian through routes towards Arthur Street and Writtle Park and vehicle access points, • The North building requires explanation of how this form interacts, resolves and contributes to the Laneway context. • The residential and Co-living uses in the single mass building add to questions about how the loss of an external wall face might be dealt with for quality living space planning.	Agreed, concern about the southern building massing and lack of detailed consideration. Agreed. Agreed, concerned about amenity of future communal areas.
3. Density • Not provided – unable to be evaluated for design excellence • Raises concerns over site and contextual density considerations for future quality detailed design	Noted.
4. Sustainability • Not provided – unable to be evaluated for design excellence	Noted.
5. Landscape • Not provided – unable to be evaluated for design excellence	Noted.
6. Amenity • Not provided – unable to be evaluated for design excellence	Noted.
7. Safety • Not provided – unable to be evaluated for design excellence • The Panel notes that opportunities for passive surveillance of public and private spaces exist with the detailed design if there is increased porosity of the building masses and a design response to the ground plane which offers attractive Common Open Spaces	Noted. Agreed, lack of detail demonstrating this in the DA package.
8. Housing Diversity and Social Interaction • Not provided at this submission stage – unable to be evaluated for design excel	Noted.
9. Aesthetics • Not provided at this submission stage – unable to be evaluated for design excel	Noted.

The detailed comments provided by the DEAP are provided in Appendix 1 of this report.
For these reasons, the development application is recommended for refusal.

Design Quality Principles

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

Apartment Design Guide

The table below provides an assessment of the proposal against the relevant design criteria contained in Parts 3 and 4 of the Apartment Design Guide (ADG). In cases where the development

does not satisfy the relevant criteria, the design guidance has been used to determine whether the proposal still meets the relevant objectives. See Appendix 4 for the full ADG compliance table.

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

Chapter 6 'Low and mid rise housing'

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

The proposed development seeks consent for a portion of the site for a 'residential flat building', which is subject to a maximum number of storeys of 4 storeys, being in the low and mid rise outer area. In addition, the proposed development seeks consent for a portion of the site for 'co-living housing', which does not benefit from the additional uplift under this chapter.

The proposed development fails to comply with the numerical development standards in relation to Number of Storeys, Building Height and Floor Space Ratio. See further assessment throughout this report and in the Key Issues part of the report below. In addition, see Appendix 3 for a detailed assessment against each relevant clause of the LMR housing provisions of the Housing SEPP. In addition, consideration of the building envelope is considered under Chapter 2 of the Housing SEPP above.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 'Remediation of land'

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

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

The Applicant has submitted a Preliminary and Detailed Site Contamination Investigation Report (P&DSI), prepared by Geo-Environmental Engineering, dated 28/11/2025, Rev No. 0, that concludes that the site can be made suitable for the proposed development, without further assessment and/or remediation.

Council's Environmental Health Officer has reviewed the submitted P&DSI and notes that the report is required to be updated to address the following matters, prior to it being accepted that the site can be made suitable for the proposed development:

- The main results table is missing in the body of the report Pg. 53-54 of 63 contains the statement "INSERT TABLE 6". This results table will have to be included in the final report.
- Provide further justification for the adoption of HIL-B.
- For the contaminants of potential concern (COPC) section the report should include that it has considered 'emerging contaminants' (i.e. PFAS) and confirm it has been screened out as a COPC.
- The final report documentation should confirm if any proposed excavation will intercept the water table and if construction dewatering is going to be required. If required the water quality must be assessed and a dewatering management plan prepared outlining the water treatment methodology (endorsed by Council) prior to discharge into Council's stormwater infrastructure. It is noted that water quality has not been assessed by the applicant at this time.

In this regard, it is Council's position that the site may not be suitable for the proposed development and poses a potential risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be not suitable for the proposed land use, as proposed

due to a lack of adequate information and Clause 4.6 of SEPP (Resilience and Hazards) 2021 has not been satisfied and Council has no jurisdiction authority to recommend approval of the application.

As such, the proposed development is recommended for refusal.

6.4. SEPP (Sustainable Buildings) 2022

A BASIX Certificate has not been submitted, which is not required for the concept development application as per the requirements of the *Environmental Planning and Assessment Regulation 2021* and SEPP (Sustainable Buildings) 2022.

It is noted that a BASIX Certificate would be required for the 'residential flat building' component of the development in a future detailed development application, should the concept development application have been supported.

6.5. SEPP (Transport and Infrastructure) 2021

Subdivision 2 'Development likely to affect an electricity transmission or distribution network', Division 5 'Electricity transmission or distribution'

Section 2.48 of the T&I SEPP requires the consent authority to given written notice to Ausgrid and take into consideration any response for development within proximity to electrical transmission and distribution infrastructure.

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

Subdivision 2 'Development in or adjacent to rail corridors—notification and other requirements', Division 15 'Railways'

Section 2.98 of the T&I SEPP applies to development on land that is in or adjacent to a rail corridor, if the development is likely to have an adverse effect on rail safety.

Section 2.99 of the T&I SEPP applies to development on land that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m (measured horizontally) of a rail corridor.

The proposed development is located within 25m of the Sydney Light Rail corridor and includes excavation / ground penetration deeper than 2m. As such, the proposal was referred to Transport for NSW for comment. See Appendix 1 for the Transport for NSW referral which notes that Transport for NSW does not object to the proposed development, subject to consideration of the impact in the future detailed development application. As such, Section 2.98 and 2.99 of the Transport and Infrastructure SEPP have been satisfied.

Subdivision 2 'Development in or adjacent to road corridors and road reservations', Division 17 'Roads and traffic'

Section 2.119 of the T&I SEPP requires the consent authority to consider the following matters for development on land that has a frontage to a classified road:

> *(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
> *(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
> > *(i) the design of the vehicular access to the land, or*
> > *(ii) the emission of smoke or dust from the development, or*
> > *(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

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(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Council notes that the subject site has a frontage to High Street, which is a classified road. Council is satisfied that the proposed development will not impact upon the safety, efficiency and ongoing operation of High Street as no vehicular access is proposed to the site. Council is also satisfied that the proposed development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road, subject to the future detailed development application. Therefore, Council is satisfied that the proposed development has satisfied Section 2.119 of the T&I SEPP.

6.6. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned Residential R3 Medium Density under RLEP 2012. See the subject site and the relevant zoning map below:

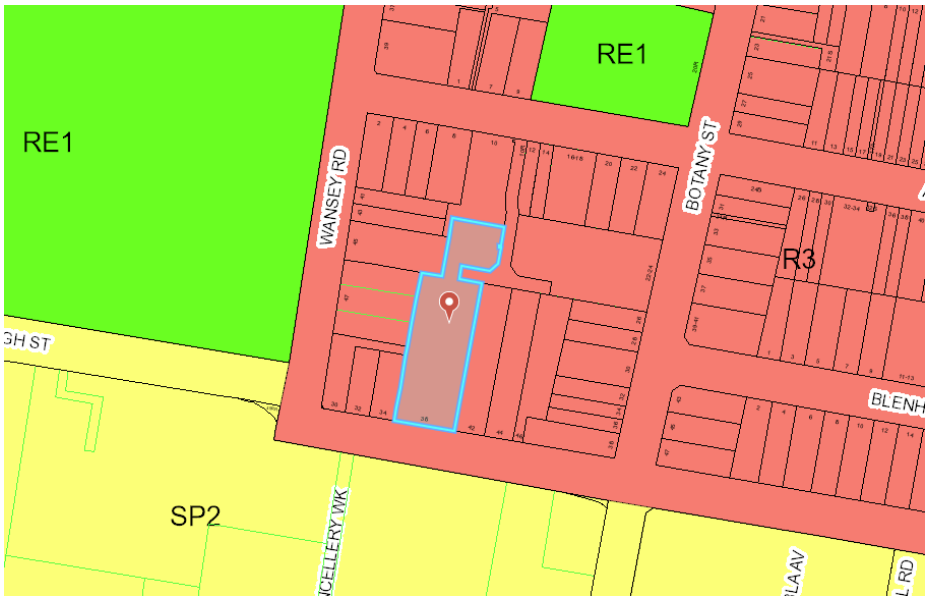


Figure 12: Zoning Map (*Source: Randwick City Council)*

Land Use Classification

The proposed development seeks consent for a mixed use development consisting of 'residential flat building' and 'co-living housing', which have the following definitions 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.*

***co-living housing** means a building or place that—*
(a) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and
(b) provides occupants with a principal place of residence for at least 3 months, and
(c) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,

but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment."

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

Development for the purposes of 'co-living housing' may be carried out with consent pursuant to Section 67 on land in a zone in which development for the purposes of 'co-living housing', 'residential flat buildings', or 'shop top housing' is permitted under another environmental planning instrument. 'Residential flat buildings' are permissible with consent within Zone R3 under the RLEP. Therefore, co-living housing is permissible with consent on the subject land.

Council notes that the concept development application seeks consent for a residential flat building adjoining a co-living housing development, which shares a common two-level basement. In addition, the proposal seeks to provide consolidated communal open space and access throughout the site, indistinguishable between the future residents of the "residential flat building" and "co-living housing", respectively. The proposal constitutes a single integrated building for the purposes of land use classification.

The definition of "basement" in RLEP 2012 is as follows:

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

The basement is proposed to be common between the proposed "residential flat building" and "co living housing" development, the northern portion of this building cannot be characterised as a 'residential flat building' as the basement, which forms part of the building, includes the co-living use. In accordance with the definition of "residential flat building", the building cannot include "co-living housing", of which the proposed development does by virtue of the basement.

The use of the site does not seek to restrict access between the 'notional site areas' as detailed throughout the Statement of Environmental Effects, which envisions a shared land use and access across the entirety of the site.

The southern building does not have an applicable residential accommodation land use classification in accordance with the Dictionary in the RLEP 2012 or Standard Instrument and is therefore prohibited development.

As such, the proposed development is recommended for refusal.

Zone Objectives

Clause 2.3(2) of RLEP 2012 states that "the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone."

The objectives of Zone R3 Medium Density Residential 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.*

The proposed concept development application is inconsistent with the objectives of the zone in the following ways:

- The proposed development does not provide for the housing needs of the community in that it seeks consent for co-living housing with significant contraventions to the building envelope development standards that far exceeds the scale of development for this mix-residential site, in which the LMR provisions relied upon seek to deliver residential flat building development in the residential zone.
- The proposed development is within in a precinct undergoing transition being in the "low and mid rise housing" area, however, the proposed development fails to provide a scale of form that contributes to the desired future character of the area. In addition, the Applicant has not provided modelling for greater densities resultant from the "low and mid rise housing" and "in fill affordable housing" provisions of the Housing SEPP, to demonstrate what densities are able to be achieved within the precinct.
- The proposed development will not protect the amenity of residents as it fails to provide sufficient off-street parking, amenity, landscaping, solar access, visual amenity, solar access, and privacy for both the future occupants of the building and the neighbouring residents.
- The proposed development will not encourage housing affordability as the development seeks to provide co-living housing that far exceeds the expectations of this diverse hosing typology to be delivered as part of Chapter 3 of the Housing SEPP. In addition, the concept development application seeks to benefit from the FSR and building height uplift in accordance with the deferred RCPP without providing for the affordable housing contributions required to be delivered for the Housing Investigation Areas subject to Amendment 9 of RLEP 2012, pursuant to clause 6.27 of RLEP 2012.

Therefore, the proposed development is recommended for refusal.

Development Standards

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

Clause	Development Standard	Proposal	Compliance
Clause 4.3: Building Height (max)	9.5m In terms of the 'residential flat building' component of the development, Chapter 6 of the Housing SEPP for outer LMR area prevails, with a maximum height of 17.5m and 4 storeys. Furthermore, the development can seek an additional 30% bonus if an appropriate affordable housing component is provided (i.e. a maximum height of 22.75m if 15% AHC provided). In terms of the 'co-living housing' component of the development, the 9.5m maximum height development standard is applicable as Chapter 6 of the Housing SEPP does not apply to co-living housing.	Residential flat building component: 27.95m Co-living housing component: 23.9m	No, see Clause 4.6 Assessment below
Clause 4.4: Floor Space Ratio (max)	0.75:1	3.28:1 (based on a total GFA of 9089sqm and	No, see Clause 4.6

	In terms of the 'residential flat building' component of the development, Chapter 6 of the Housing SEPP for outer LMR area prevails, with a maximum FSR of 1.5:1. Furthermore, the development can seek an additional 30% bonus if an appropriate affordable housing component is provided (i.e. a maximum height of 1.95:1 if 15% AHC provided). In terms of the 'co-living housing' component of the development, the maximum FSR is 0.825:1 (being 0.75:1 + 10% bonus awarded under the co-living housing provisions of Chapter 3 of the Housing SEPP).	a site area of 2767.9sqm).	Assessment below

6.6.1. Clause 4.5 - Calculation of floor space ratio and site area

Clause 4.5 'Calculation of floor space ratio and site area' of RLEP 2012 relevant states the following:

> *(2) **Definition of "floor space ratio"** The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*
>
> *(3) **Site area** In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be—*
>
> > *(a) if the proposed development is to be carried out on only one lot, the area of that lot, or*
> > *(b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*
> >
> > *In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development."*

The Applicant has calculated the proposed FSR of the development by separating the different residential land uses on the site into 'notional site areas' to determine the respective site area.

That is, the subject site has a total site area of 2,767sqm.

- The 'co living housing' component of the site has a 'notional site area' of 687.7sqm.
- The 'residential flat building' component of the site has a 'notional site area' of 2,080.2sqm.

Council confirms that this application of 'site area', 'gross floor area' and 'floor space ratio' is incorrect, in accordance with the RLEP 2012.

In the submitted Clause 4.6 Statements, the Applicant argues that the following cases are relevant to this understand of calculating GFA. Council disagrees with this interpretation of these cases, with comments provided against each below:

- ***Mulpha Norwest Pty Ltd v Hills Shire Council* [2020] NSWLEC 74** – relates to single land use across 2 sites where one site has an FSR development and another site has no applicable FSR development standard under the LEP. No reference to a 'notional site area'.

- ***Perpetual Corporate Trust Limited v Randwick City Council* [2021] NSWLEC 1380 -** relates to mixed-use development use across multiple sites where different lots have

different applicable FSR development standards under the LEP. The Court's findings relate to the application of each respective FSR across the respective sites, not a 'notional site area'. In relation to the different uses within each portion of the site, all different land uses where included as total GFA for that portion of the site, not separated into two different areas. No reference to a 'notional site area'.

The Applicant's designation of 'notional site areas' fails to account for the following:

- The proposed development will have a shared basement between the adjoining co-living housing and residential flat building developments, of which the co-living will therefore share the 'notional site area' of the residential flat building component of the development. This will include likely shared parking, waste, services, access and plant.
- The applicant has identified consolidated communal open space and deep soil zones across the entire site to be shared amongst all occupants of the site.
- There will not be restrictions on the movement of people across the site depending on which building you live in.

As such, Council asserts that the subject site comprises of a single lot consisting of an area of 2,767sqm. In accordance with clause 4.5 of RLEP, the site area for the purpose of applying a floor space ratio, this is the subject 'site area'.

6.6.2. Clause 4.6 - Exceptions to development standards

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

6.6.3. Clause 6.2 – Earthworks

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

The development application cannot be properly assessed because a Geotechnical Investigation Report has not been provided addressing the relevant matters of consideration under clause 6.2 of RLEP 2012. As such, the subject development satisfies clause 6.2 of RLEP 2012.

As such, the subject development does not satisfy clause 6.2 of RLEP 2012 and is recommended for refusal.

6.6.4. Clause 6.4 – Stormwater management

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

Council is not satisfied that the proposed development will adequately address stormwater management, as the site stormwater discharges into the street drainage system in Arthur Laneway. Insufficient investigation has been undertaken to determine the capacity of the system downstream from the discharge point or the level / alignment of the receiving pipeline.

See Appendix 1 for comments from Council's Development Engineer on this matter.

As such, the subject development does not satisfy clause 6.4 of RLEP 2012 and is recommended for refusal.

6.6.5. Clause 6.8 – Airspace operations

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

Council referred the development application to the Sydney Airport Corporation. Concurrence has been received from the Sydney Airport Corporation, who are supportive of the development application. Refer to Appendix 1 for their comments.

As such, the subject development satisfies clause 6.8 of RLEP 2012.

6.6.6. 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 concept development application has addressed relevant matters of essential services, subject to consideration in a future detailed development application.

As such, the subject development satisfies clause 6.10 of RLEP 2012.

6.6.7. Clause 6.11 – Design excellence

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

The proposed development is subject to clause 6.12 of RLEP as it seeks consent for buildings >15m in height.

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

- The proposed development has a largely consistent envelope to all floors, failing to have a form that divides the envelope into sections that present a human scale and contribute the existing local character of the area. The built form and architectural treatment are largely indistinct between lower and upper floors, which detracts from the desirable elements of local character to High Street (in particular).
- The proposed southern building has a depth of 63.2m, which results in a form that is excessive within the urban block and fails to respond to the site conditions and characteristics.
- The proposed development does not sufficiently modulate the side elevations of the building to reduce the perceived massing and height of the building. The elevations are monolithic and visually dominant, visually prominent from public domain.
- The proposed northern building has nil setbacks to the Council laneway and is visually dominant within its immediate context of buildings. The applicant has failed to detail how the form interacts, resolves and contributes to the laneway context.
- The proposed development does not sufficiently articulate the façade of the building to reduce the perceived massing and height of the building.

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

- The Applicant has failed to provide a detailed contextual analysis or urban design justification for the proposed form and scale of the development.
- The proposed development will visually dominate the other adjoining sites and buildings, which is not responsive to the existing or desired character of future form.

- The proposed development fails to provide adequate planted zones within the side setback areas to improve the appearance of the development by softening the impact of the 8 storey buildings.

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

- The Applicant has failed to provide indicative building layout plans, solar analysis, natural ventilation analysis, and pedestrian and vehicular access analysis in order to determine whether the development meets sustainable design principles and relevant requirements under the ADG, SEPPs and DCP 2013.
- The southern building has a depth of 63.2m to a north-south orientation, without any significant break in the form. It is unclear whether the proposed development will achieve adequate solar access to future dwellings.

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

6.6.8. Clause 6.27 - Affordable housing contributions for other areas

This clause applies to development, other than excluded development, on land identified as "Area 2" or "Area 3" on the *Special Provisions Area Map.*

Council notes that the subject site is not included within any area as identified on the *Special Provisions Area Map*. However, it is noted that all areas as identified within the Housing Investigation Areas within Amendment 9 the RLEP 2012, are identified as within either "Area 2" or "Area 3".

The Applicant seeks to justify the concept development application and significant variations to building height and floor space ratio development standards by arguing that as the site forms part of a deferred HIA area, that the desired future character is for 8 storey buildings.

However, the Applicant fails to account for the other provisions that would be enabled the uplift should it have been supported by Council, including the provision for an affordable housing contribution under clause 6.27 of RLEP 2012.

7. Clause 4.6 Exception to a Development Standard

The proposal seeks to vary the following development standards contained within RLEP 2012:

RLEP 2012	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Clause 4.3: Building Height (co-living housing only)	9.5m	23.9m	14.4m	152.8%

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

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

Section 16(1): Floor Space Ratio (in-fill affordable housing)	1.95:1	3.28:1	1.33:1	68.2%
Section 16(3): Building Height (in-fill affordable housing)	22.75m (where at least 15% of affordable housing component provided)	27.95m	5.2m	22.6%
Section 28(2): Floor Space Ratio (co-living housing)	0.825:1	3.28:1	2.455:1	125.9%
Section 176(2): Number of Storeys (residential flat building)	4 storeys	8 storeys	4 storeys	100%

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

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

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

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

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

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

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

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

is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

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

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

7.1. Building Height: Clause 4.3 of RLEP 2012

The applicant's written justification for the departure from the building height standard is contained in Appendix 2. This written justification relates to the co-living housing component of the development only.

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

The applicant's written request seeks to justify the contravention of the Building Height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The written request provides the following comments against the relevant objectives of clause 4.3 of RLEP 2012 , as follows:

Objective	Summary of Comments
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 proposed development is compatible with the desired future character of the locality when considered against Council's strategic vision for the High Street corridor. The Randwick Comprehensive Planning Proposal (2022) identifies High Street as a key Housing Investigation Area (HIA). • Although the subject site was ultimately deferred from the draft rezoning at the Extraordinary Council Meeting of 30 August 2022 following a request from UNSW for further detailed assessment, Council's broader vision for the High Street HIA remains relevant. • Within this strategic context, the proposed development (specifically the co-living building) represents an appropriate built form response. Its height and massing at 7-storeys, sit well below the 8–9 storey mid-rise typology anticipated for the HIA.
(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	• The site is located approximately 60 metres to the east of the Randwick Racecourse Conservation Area (refer to figure below), however the proposed development does not interface directly with this area and will not impact its identified heritage values. • Importantly, the applicable DCP does not identify any contributory buildings within or adjoining the subject site. As such, there is no established heritage streetscape or local character that the development is required to replicate.
(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	*Visual Bulk* • The 7-storey co-living building sits below the 8–9 storey mid-rise form identified in the Randwick Planning Proposal for the High Street HIA, demonstrating that the scale of the development remains consistent with the locality's likely desired future character. • The concept envelope incorporates stepping, modulation and appropriate separation distances to surrounding lower-scale residential areas, which effectively reduce perceived bulk and create a suitable transition in scale • The co-living building presents a modest height of 7 storeys, stepping down from the proposed adjoining RFBs, which reach up to 8 storeys. This ensures a coordinated building profile across the site rather than an abrupt height transition. *Loss of Privacy* • The proposed development will not result in any unacceptable impacts on the privacy of adjoining or neighbouring properties. This application is lodged as a Concept DA, which establishes the building envelope, height and general massing only. • Detailed architectural elements that relate directly to privacy, such as the location and orientation of windows, balconies and internal room layouts, do not form part of this stage and will be fully addressed in the subsequent Detailed DA. *Overshadowing* • The shadow analysis for mid-winter demonstrates that the proposed development does not result in any unreasonable overshadowing impacts to adjoining or neighbouring properties. • Overall, the diagrams confirm that the proposal is appropriately sited and massed to avoid adverse overshadowing impacts on adjoining residential properties. The shadow analysis demonstrates that the additional overshadowing generated by the height variation is limited in extent and falls predominantly over the High Street road reserve and UNSW campus, both of which are non-residential and do not rely on solar access for amenity.

	Any overshadowing of residential properties occurs only from the compliant built form. *Views* • In terms of views, the only significant long-distance views potentially available in the locality are towards the east to Coogee Beach, approximately 2 km away. Given the orientation of surrounding development, the proposed development will not obstruct or diminish any of these potential eastern view corridors. The topography of the area may also allow for some distant city skyline views, approximately 7 kilometres away, in the north-western direction. • While some UNSW buildings could experience partial view change, these buildings are not residential and therefore do not rely on outlook for residential amenity. The only nearby residential property that could be considered is 42 High Street, Randwick, located to the east of the subject site. However, any distant views from this location would be oriented to the northwest, and because the proposed building sits to the west of the site, it does not intrude into that potential view corridor.

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

The assessing officers' reasons in forming this opinion is that the significant variation sought to the applicable maximum Building Height development standard should not be dealt with under the clause 4.6 pathway and should be subject to a Planning Proposal prepared in accordance with section 3.33 of the EP&A Act. The scale of the variation proposed are so substantial that it amounts to a de facto re-zoning through the development assessment process.

In relation to the substance of the variation sought, the proposed development does not have a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height than what is envisioned in the area. The reliance on the deferred uplift provisions of the DCPP is inappropriate in failing to address the wider block planning required of the site under clause 6.12 of RLEP 2012. In addition, the Applicant has failed to provide a detailed character assessment of the area in transition to demonstrate that the proposed development will be consistent with the desired future character having regard to relevant provisions of the Housing SEPP.

In addition, the proposed development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, overshadowing and views (for the reasons as detailed throughout this report).
As such, the Applicant has not demonstrated that compliance with the Building Height 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 Building Height development standard as follows:

- *The proposal is compatible with the desired future character of the locality, noting that Council's Randwick Comprehensive Planning Proposal (which has been adopted and forms part of the RLEP, with the specific provisions for this site being deferred) identifies the High Street HIA corridor for midrise development of 8–9 storeys. Although this block was deferred from the proposal following UNSW's request for further assessment, the*

strategic vision remains relevant and demonstrates that increased height and density are anticipated in this area.

- *The proposed height represents an appropriate outcome that sits below the 8–9 storey typology envisioned in Council's Planning Proposal and HIA chapter, ensuring a built form that is consistent with the future urban character for High Street.*
- *The development incorporates a stepped massing that reduces visual bulk, provides a transition to lower scale residential areas and ensures the proposal does not appear visually dominant in its immediate context. Further refinement of the building's articulation, materials, and detailed massing will occur at the Detailed DA stage, noting that this application seeks concept approval only.*
- *Overshadowing impacts are acceptable, with additional shadow generated by the height variation falling predominantly over the High Street road reserve and UNSW land, which do not rely on sunlight for residential amenity. At 9am and 1pm, no additional overshadowing is introduced to residential properties, and by 3pm, any shadow cast on the adjacent eastern site results from the compliant portion of the built form, not the height variation. All residential properties maintain sufficient mid-day solar access, and the proposal does not give rise to any unreasonable overshadowing impacts.*
- *View impacts are minimal, as the proposal does not intrude into significant view corridors to Coogee Beach (east) or potential distant city skyline views (north-west). Should the Planning Proposal outcomes be realised, taller buildings will form the High Street precinct, meaning some view change is expected, however, the siting of the proposal ensure that any incremental view impact is minimised.*
- *Privacy impacts can be appropriately managed, noting that this is a Concept DA. Detailed window placement, balcony orientation, screening and landscaping measures will be addressed at the detailed DA stage to ensure no unreasonable overlooking.*
- *The development does not adversely affect any heritage items or conservation areas, with substantial separation distances to Blenheim House and the Randwick Racecourse Conservation Area. The proposal does not interfere with the significance, setting or views to or from these heritage items.*
- *The proposal responds to the established and emerging built form of the precinct, aligning with Council's long-term vision for increased density and improved housing diversity along High Street while still maintaining an appropriate interface with surrounding properties.The proposal will provide a suitable design and be of suitable amenity in terms of the built environment and represent the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979).*

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

- The Applicant's reliance on the deferred Planning Proposal (and proposed maximum FSR of 3.1:1 and maximum building height of 26m) is flawed, it that the proposed concept development application fails to acknowledge or design for the proposed uplift which incorporates the detailed strategic intent and justification for the uplift through the concept block plan in the "Arthur Street Housing Investigation Area Urban Design Report".
- The proposed development does not have a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height that what is envisioned in the area. In addition, the Applicant has failed to provide a detailed character assessment of the area in transition to demonstrate that the proposed development will be consistent with the desired future character having regard to relevant provisions of the Housing SEPP.
- The proposed development results in a built form that has an 8 storey presentation within the streetscape and to adjoining sites, which is presently dominated by a mix of single to four storey development. In addition, the Applicant has failed to provide a detailed character assessment of the area in transition to demonstrate that the proposed development will be consistent with the desired future character having regard to the "low and mid rise housing" and "in fill affordable housing" provisions of the Housing SEPP.
- The proposed development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, overshadowing and views (for the reasons as detailed throughout this report).

- Overall, the design does not exhibit design excellence, as per the comments made by the Design Excellence Advisory Panel.
- The proposal does not meet the objectives of the R3 Zone or Section 1.3 of the EP&A Act, Development Control Plans and Policies.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent must not be granted for development that contravenes the Building Height development standard for the co-living component of the proposed development.

7.2. Building Height: Section 16(3) of Housing SEPP

The applicant's written justification for the departure from the building height standard is contained in Appendix 2. This written justification relates to the residential flat building component of the development only.

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

The applicant's written request seeks to justify the contravention of the Building Height development standard for the residential flat building component of the development by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the development satisfies the objectives of Clause 4.3 Height of Buildings under the RLEP, as well as the principles in Section 3 of the Housing SEPP, noting that the applicable development standard sits within the Housing SEPP and that the SEPP does not contain specific objectives for the height standard. This assessment is provided to address the First Test under Wehbe.

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

The assessing officers' reasons in forming this opinion is that the Building Height non-discretionary development standard does not have a specified objective within the Housing SEPP EPI. The Applicant's reliance that the proposed development is consistent with the objectives of the chapter and the objectives of the maximum building height in RLEP 2012 is not the test under *Wehbe v Pittwater Council [2007] NSWLEC 827.* In the absence of relevant objectives of the non-discretionary development standard, the applicant is to establish what the underlying objective or purpose of the standard is (paragraph 114, *Patchy Properties Pty Ltd v Randwick City Council [2026]* NSWLEC 1190).

As such, the written justification is fundamentally flawed, and the Applicant has not demonstrated that compliance with the Building Height 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 Building Height development standard as follows:

- *Pursuant to Section 180(2)(b) of Chapter 6 of the Housing SEPP, the site is subject to a maximum storey height of 22m. The proposal includes infill affordable housing. As such, Chapter 2 – Affordable Housing of the Housing SEPP applies to the proposed development. Section 16(3) of Chapter 2 of the Housing SEPP permits a 30% uplift above the base storey height for affordable housing, thereby allowing for a height of 28.6m which also allows for 8 storeys. Therefore, despite the storey height non-compliance, the*

proposed 8-storey LMR affordable housing residential flat building is in correlation with the allowable building height of 28.6m. It is noted that the maximum building height of the proposed development (26.1m) is well below the 28.6m building height control.

- *The proposal is compatible with the desired future character of the locality, noting that Council's Randwick Comprehensive Planning Proposal (which has been adopted and forms part of the RLEP, with the specific provisions for this site being deferred) identifies the High Street corridor for mid-rise development of 8–9 storeys. Although this block was deferred from the proposal following UNSW's request for further assessment, the strategic vision remains relevant and demonstrates that increased height and density are anticipated in this area.*
- *The proposed height represents an appropriate outcome that sits below the 8–9 storey typology envisioned in the Planning Proposal and Housing Investigation Area (HIA) chapter, ensuring a built form that is consistent with the likely future urban character for High Street.*
- *The building envelopes incorporate a stepped massing that reduce visual bulk, provide a transition to lower scale residential areas and ensure the proposal does not appear visually dominant in its immediate context. Further refinement of the building's articulation, materials, and detailed massing will occur at the Detailed DA stage, noting that this application seeks concept approval only.*
- *Overshadowing impacts are acceptable, noting in the RFB overshadowing analysis, any additional shadow arising from the proposal is limited, short in duration and largely confined to roof areas, side setback zones, the High Street road reserve and small portions of the UNSW campus. While some overshadowing of residential properties occurs at the natural edges of the day, this is an unavoidable consequence of the site's orientation and surrounding urban form. Importantly, the incremental shadow footprint is fast moving, and all residential properties retain sufficient mid-day solar access, ensuring no unreasonable loss of amenity.*
- *View impacts are minimal, as the proposal does not intrude into significant view corridors to Coogee Beach (east) or potential distant city skyline views (north-west). Should the Planning Proposal outcomes be realised, taller buildings will form the High Street precinct, meaning some view change is expected, however, the siting of the proposal ensure that any incremental view impact is minimised.*
- *Privacy impacts can be appropriately managed post Concept DA (i.e. through detailed design as part of a future detailed DA). Detailed window placement, balcony orientation, screening and landscaping measures will be addressed at the detailed DA stage to ensure no unreasonable overlooking.*
- *The development does not adversely affect any heritage items or conservation areas, with substantial separation distances to Blenheim House and the Randwick Racecourse Conservation Area. The proposal does not interfere with the significance, setting or views to or from these heritage items.*
- *The proposal responds to the established and particularly, emerging built form of the precinct, aligning with Council's long-term vision for increased density and improved housing diversity along High Street while still maintaining an appropriate interface with surrounding properties.*

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

- The Applicant's reliance on the deferred Planning Proposal (and proposed maximum FSR of 3.1:1 and maximum building height of 26m) is flawed, in that the proposed concept development application fails to acknowledge or design for the proposed uplift which incorporates the detailed strategic intent and justification for the uplift through the concept block plan in the "Arthur Street Housing Investigation Area Urban Design Report".
- The proposed development does not have a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height than what is envisioned in the area. In addition, the Applicant has failed to provide a detailed character assessment of the area in transition to demonstrate that the proposed development will be consistent with the desired future character having regard to relevant provisions of the Housing SEPP.

- The proposed development results in a built form that has an 8 storey presentation within the streetscape and to adjoining sites, which is presently dominated by a mix of single to four storey development. In addition, the Applicant has failed to provide a detailed character assessment of the area in transition to demonstrate that the proposed development will be consistent with the desired future character having regard to the "low and mid rise housing" and "in fill affordable housing" provisions of the Housing SEPP.
- The proposed development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, overshadowing and views (for the reasons as detailed throughout this report).
- Overall, the design does not exhibit design excellence, as per the comments made by the Design Excellence Advisory Panel.
- The proposal does not meet the objectives of the R3 Zone or Section 1.3 of the EP&A Act, Development Control Plans and Policies.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent must not be granted for development that contravenes the Building Height development standard for the residential flat building component of the proposed development.

7.3. Floor Space Ratio: Section 16(1) of Housing SEPP (In-Fill Affordable Housing) and Section 28(2) of Housing SEPP (Co Living Housing)

The applicant's written justification for the departure from the Floor Space Ratio development standards are contained in Appendix 2. The applicant has submitted 2 separation written justifications, one for each respective residential component of the development, being residential flat building and co living housing, respectively.

Council notes that the written requests outline the following FSR calculation:

> *"The residential flat building component has a GFA of 6,695m2 and occupies only part of the total site area. For the purposes of this request, land accommodating the residential flat building component constitutes the 'notional site area', being 2,080.2m². Based on this notional site area, the FSR of the residential flat building component is 3.1:1."*
>
> *"The coliving component has a Gross Floor Area (**GFA**) of 2,394m² and occupies only part of the total site area. For the purposes of this request, land accommodating the co-living component constitutes the 'notional site area', being 687.7m². Based on this notional site area, the FSR of the co-living component is 3.5:1."*

Council contends that this application of calculating the respective GFA and FSR is incorrect (see comments in clause 4.5 of RLEP assessment above).
In addition, the proposed concept development application fails to provide a GFA calculation plan to show how they have calculated the GFA for the proposed development. Should the GFA calculation include the full extent of the proposed building envelope, the GFA calculation would include floor areas excluded in the GFA calculation in accordance with the GFA definition in RLEP 2012 and would therefore not be an accurate construction of GFA and the resultant FSR. This includes common vertical circulation, plant and service areas, non-basement waste rooms, and voids.

Based on Council's calculations, the proposed concept development application seeks consent for a maximum FSR of 3.28:1, based on a total GFA of 9089sqm and a site area of 2767.9sqm. This exceeds the respective maximum floor space ratio development standards by 1.33:1 (or 68.2%) and 2.455 (or 125.9%).

As such, Council asserts that the submitted Clause 4.6 is incorrect and cannot be relied upon to support the departure to the FSR development standard.

7.4. Number of Storeys: Section 176(2) of Housing SEPP

The Applicant has failed to provide a written request to vary the Number of Storeys non-discretionary development standard applying to the residential flat building component of the development under section 176(2) of the Housing SEPP.

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

On this basis, the requirements of clause 4.6(3) have not been satisfied and development consent should not be granted for development that contravenes the Number of Storeys non-discretionary development standard 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 5.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	**Comments**
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 5 and the discussion in Key Issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is inconsistent with the desired future character in the locality. The proposal will result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The concept development application is not suitable for the subject site in seeking significant variations to the maximum FSR and Building Height development standards subject to the site. Such significant variations represent an overdevelopment of the site. The concept development application would result in a piecemeal and inefficient use of land, contrary to orderly and strategic planning principles.
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 concept development application is not in the public interest having regard to improper application of the uplift sought under Clause 4.6 of RLEP 2012 to apply the deferred maximum FSR and Building Height development standards to the site under the RCPP. The Application improperly relies on, and seeks to give weight to, non-operative and unimplemented planning controls. Approval of the proposal would undermine the coordinated and precinct-wide planning of the Key Site, in accordance with clause 6.12 of RLEP 2012. Approval would prejudice the achievement of the intended future character and integrated urban form of the precinct. Approval of the proposed development would set an undesirable precedent for similar unacceptable development within a precinct undergoing transition as a result of the LMR provisions within SEPP Housing.

9.1. Discussion of Key Issues

Concept Development Application

Section 4.23(2) and (3) of the EP&A Act 1979 is as follows:

> *"(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.*
>
> *Note.*
> *Section 3.44(5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.*
>
> *(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations."*

Section 6.12 of RLEP 2012 is as follows:

> *"(1) The objective of this clause is to ensure that development on certain land occurs in accordance with a site-specific development control plan.*
>
> *(2) This clause applies to development on land—*
> *(a) that has a site area of at least 10,000 square metres, or*
> *(b) identified as "DCP required" on the Key Sites Map.*
>
> *(3) Development consent must not be granted for development on land to which this clause applies unless—*
> *(a) a development control plan that provides for the matters specified in subclause (4) has been prepared for the land, or*
> *(b) guidelines and controls similar to those mentioned in subclause (4) already apply to the land, or*
> *(c) the development is of a minor nature and is consistent with the objectives of the zone in which the land is situated.*
>
> *(4) The development control plan must provide for all of the following—*
> *(a) design principles drawn from an analysis of the site and its context,*
> *(b) phasing of development and how it will provide for the social and recreational needs of a new community,*
> *(c) distribution of land uses, including open space (its function and landscaping) and environment protection areas,*
> *(d) subdivision pattern and provision of services,*
> *(e) building envelopes and built form controls,*
> *(f) housing mixes and tenure choices, including affordable and adaptable housing,*
> *(g) heritage conservation, including both Aboriginal and European heritage,*
> *(h) encouraging sustainable transport, including increased use of public transport, walking and cycling, road access and the circulation network and car parking provision, including integrated options to reduce car use,*
> *(i) impact on, and improvements to, the public domain,*
> *(j) identification and conservation of native flora and fauna habitat and habitat corridors on the site, including any threatened species, populations or ecological communities,*
> *(k) the application of the principles of ecologically sustainable development,*
> *(l) identification, extent and management of watercourses, wetlands and riparian lands and any buffer areas,*
> *(m) environmental constraints, including climate change, the urban heat island effect, acid sulfate soils, flooding, contamination and remediation,*
> *(n) opportunities to incorporate integrated natural water-cycle design, including dual reticulation systems for potable and non-potable water use, and integrated renewable energy design,*
> *(o) the capacity of, and opportunity for connection to, existing areas of open space to accommodate the needs of the growing local population."*

The site is identified within a block that requires a DCP, being the block bound by High Street, Wansey Road, Arthur Street and Botany Street, in accordance with the Key Sites Map of RLEP 2012.

The Applicant states the following in the Statement of Environment Effects:

> *"Clause 6.12 applies to this application as the site is identified as "DCP required" on the Key Sites Map. Ordinarily, this would trigger preparation of a site-specific DCP under Clause 6.12(3)(a). However, Clause 6.12(3)(b) permits consent to be granted where guidelines and controls similar to those in Clause 6.12(4) already apply to the land.*
>
> *In this case, the proposal relates to a single lot within a deferred HIA block, and the site is not part of a large multi-lot precinct requiring subdivision staging, estate-wide infrastructure planning, or coordinated land-use distribution. The relevant outcomes ordinarily delivered through a site-specific DCP are instead already regulated through the Housing SEPP*

(including LMR, co-living and affordable housing provisions), the ADG, RDCP 2013, RLEP 2012 (including heritage and design excellence controls), and other applicable SEPPs such as those addressed in Sections 4.5.3 to 4.5.6.

These instruments collectively provide an equivalent (and in some cases more stringent) framework to achieve the matters listed in Clause 6.12(4), as detailed below."

Council does not agree with the applicant and asserts that the site-specific conditions and considerations required under a DCP in accordance with clause 6.12(4) of RLEP 2012 are not adequately addressed through either LGA-wide or state-wide EPIs and planning provisions, which requires specific and detailed analysis under this particular block.

In relation to the matters specified in section 6.12(4), the subject block is not a conventional isolated lot capable of orderly redevelopment in isolation, it is a remnant parcel within a deferred precinct expressly identified as requiring block-wide planning.

The proposed concept development application, by relying on a single-lot DA rather than a detailed precinct-wide plan, is deficient because it proposes a mid-rise envelope in the centre of the block that pre-empts block-wide planning, predetermines built form outcomes, forecloses opportunities for consolidation, and inhibits adjoining lots from achieving orderly and ADG-compliant redevelopment.

As such, the concept development application is inherently incapable of delivering orderly outcomes or appropriate integration with the wider block. The proposed scale and form of development is premature and inconsistent with the planning controls applying to the land. Support for this approach would pre-empt and undermine the coordinated planning framework envisaged by clause 6.12.

The concept development application is incapable of meeting the coordinated framework intended by RLEP 2012 and is inconsistent with the Council's strategic reasons for deferral of the site under the RCPP.

The lack of specific site planning of this subject block from the Applicant that addresses the requirements under clause 6.12(4) of RLEP 2012 fails to satisfy section 4.23 of the EP&A Act 1979 in that the concept development application does not contain the information requirement for the site-specific DCP.

The application is not a valid or adequate concept development application and must be refused for that reason alone.
The concept development application must include all the information that is critical to the assessment of the assessment of the proposal – see the planning principle set out in Anglican Church Property Trust v Sydney City Council [2003] NSWLEC 353.

Building Envelope and Massing

The concept development seeks variations to the building envelope standards and design criteria:

1. *Building Height:*
   - 27.95m (to the residential flat building portion of the development), exceeding the maximum building height development standard by 5.2m (or 22.6%).
   - 23.9m (to the co-living housing portion of the development), exceeding the maximum building height development standard by 14.4m (or 152.8%).

2. *Floor Space Ratio:*
   - 3.28:1 (based on a total GFA of 9089sqm and a site area of 2767.9sqm), exceeding the respective maximum floor space ratio development standards by 1.33:1 (or 68.2%) and 2.455 (or 125.9%).

3. *Number of Storeys:*
   - 8 storeys (to the residential flat building portion of the development), exceeding the maximum number of storeys development standard by 4 storeys (or 100%).

The proposed development does not have a size and scale of development that recognises the desirable elements of the existing streetscape and built form, being a greater height than what is envisioned in the area. In addition, the Applicant has failed to provide a detailed character assessment of the area in transition to demonstrate that the proposed development will be consistent with the desired future character having regard to relevant provisions of the Housing SEPP.

The proposed development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual amenity, loss of privacy, overshadowing and views.

The significant variations sought to the applicable maximum floor space ratio development standards should not be dealt with under the clause 4.6 pathway and should be subject to a Planning Proposal prepared in accordance with Section 3.33 of the EP&A Act. The scale of variations proposed are so substantial that it amounts to a de facto re-zoning through the development assessment process.

Building Separation

The proposed concept development application consists of both residential apartment development (being a residential flat building) and co-living housing development. As such, the building separation design criteria in the ADG are applicable to all buildings on the site.

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

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

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

Southern Building

- Eastern and western side boundaries:
  - 1-4 storeys: 3m – 6m.
  - 5-8 storeys: 5m – 9m.
- Northern boundary:
  - 1-4 storeys: 6m.
  - 5-8 storeys: 9m.

Northern Building

- Southern boundary:
  - 1-8 storeys: nil setback.
- Eastern boundary:
  - 1-8 storeys: nil – 1m.
- Western boundary:
  - 1-4 storeys: 6m.
  - 5-8 storeys: 9m.
- Eastern boundary:
  - 1-4 storeys: 6m.
  - 5-8 storeys: 9m.

The proposed concept development application does not include indicative detailed floor plans for each floor. Without such indicative information, it is unclear as to whether the development complies with the ADG separation requirements, noting different design criteria between habitable rooms/balconies and non-habitable rooms.

The proposed development does not provide adequate separation to its side boundaries. The southern building will be within close proximity to the adjoining buildings including being only separated 4.39m to 34 High Street, 5.91m to No. 42 High Street and 9.51m to 45 Wansey Road. The northern building will be within close proximity to the adjoining buildings including being only separated 9.25m to 45 Wansey Road.

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

The proposed building envelopes would unreasonably constrain and effectively sterilise the reasonable future redevelopment potential of adjoining sites within the block of this Key Site. As a consequence, the proposal would prejudice the ability of adjoining sites to achieve acceptable outcomes for solar access, visual and acoustic privacy, building separation, and deep soil areas.

Internal Residential Amenity

The proposed concept development application seeks to rely upon a subsequent detailed development application to demonstrate that the future occupants of the development will be provided with adequate amenity.

Council asserts that the amenity of future occupants are fundamental, critical aspects of the proposal that should form part of the concept development application and matters of consideration, rather than the subsequent detailed development application. Such considerations are:

- Landscaped area (in accordance with section 19(2)(b) of Housing SEPP).
- Parking spaces (in accordance with section 19(e)-(f) and section 68(2)(e) of Housing SEPP).
- Co-living housing communal open space (in accordance with section 68(2)(d) of Housing SEPP).
- Solar access to co-living housing communal living area (in accordance with section 69(2)(c) of Housing SEPP).
- Residential flat building communal open space (in accordance with section 3D-1 of ADG).
- Residential flat building solar access (in accordance with section 4A-1 of ADG).
- Residential flat building natural ventilation (in accordance with section 4B-1 of ADG).
- Residential flat building circulation core (in accordance with section 4F-1 of ADG).

Having regard to the above, insufficient information has been provided to enable Council to properly consider the following matters required pursuant to the in-fill affordable housing, residential apartment development and co-living housing provisions of Housing SEPP.

Neighbouring Residential Amenity

The proposed development will have an unacceptable adverse impact upon the amenity of the neighbouring sites in terms of visual amenity, privacy, solar access, and potential view sharing and is inconsistent with the relevant provisions of Section C2 of RDCP 2013.

- In terms of visual amenity, the proposed development consists of a part 7 and part 8 storey building (southern building) and 8 storey building (northern building) that maintains a largely consistent envelope across all levels.

  The massing and envelope of the proposed building do not have sufficient modulation/articulation or exhibit design excellence, which will have an adverse impact upon visual amenity of the neighbouring buildings.

- Section 5.3(i) in Part C2 of RDCP 2013 requires windows and balconies of habitable rooms to be located to minimise overlooking of private open space, windows or glassed doors in adjoining dwellings (whether part of the development or on adjoining properties).

In terms of visual privacy, the proposed development does not comply with ADG separation requirements, which may result in direct overlooking of adjoining dwellings and their private open space.

In terms of acoustic privacy, the proposed development does not comply with ADG separation requirements, which may result in acoustic impacts on adjoining dwellings.

- Section 5.1(i) in Part C2 of RDCP 2013 requires 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 (mid winter).

  In terms of solar access, the proposed development will result in adverse solar impacts on adjoining and nearby neighbours, as a direct result of the non-compliant FSR and building height development standards.

- A detailed view impact assessment has not been submitted with the submitted development application. The full extent of the impact on existing views is not known.

Desired Future Character

Section 20 in Division 1 'In-fill affordable housing' of the Housing SEPP provides as follows:

> *"20 Design requirements*
> *…*
> *(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."*

Section 69(2) in Part 3 'Co-living housing' of the Housing SEPP provides as follows:

> *"(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—*
> *(f) the design of the building will be comp atible with—*
> *(i) the desirable elements of the character of the local area, or*
> *(ii) for precincts undergoing transition—the desired future character of the precinct."*

The Applicant's Statement of Environmental Effects states the following in relation to desired future character:

> *"The Design Verification Statement (Appendix K) confirms the concept has been developed in response to the site and precinct context, and that the residential built form is compatible with the desired future mid-rise character of the transitioning High Street/light rail corridor. Detailed façade and character refinement will occur at the detailed DA stage.*
> *…*
> *As a result of the Randwick Comprehensive Planning Proposal and the High Street Housing Investigation Area vision, the broader precinct (excluding the deferred block) is now benefiting from uplifts to approximately 3:1 FSR and 26m height. While the subject block was deferred and is not currently afforded those controls under the RLEP 2012, that strategic framework remains the clearest statement of Council's intended future character for High Street. The LMR housing and infill provisions in the Housing SEPP now enable additional height on the site, however, even with the infill bonus, the concept remains below the 3:1 / 26m intensification vision that applies to the surrounding HIA context. In that setting, the proposal presents a mid-rise form that is not aligned with the future character of High Street."*

The applicant relies upon the potential height and FSR bonuses that may be achieved on adjoining or nearby sites via the "low and mid rise housing" and "in fill affordable housing" provisions of the Housing SEPP to argue that the proposed development is compatible with the desired future character of the area.

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The proposed concept development application fails to provide any detailed modelling of the entire block of the subject site to demonstrate that such development would be achievable within the block. This includes (1) acknowledging that the eastern part of the block is located within the' LMR inner area' and would be subject to base 22m building height and 2.2:1 FSR height maximum development standards pursuant to section 180 of the Housing SEPP (which increases to 28.6m and 2.86:1 if the 30% affordable housing bonus is available), and (2) that majority of sites are owned by the University of NSW and likely subject to amalgamation.



Figure 13: Indicaitve LMR mapping showing the inner area (in blue) and outer area (in red) (*Source: Randwick City Council)*

The applicant has failed to demonstrate the detailed site analysis and consideration how the buildings have been located on the site in response to the unique site characteristics, dimensions, shapes, and conditions of the site.

The proposed concept development application also fails to demonstrate that such envelopes would be achievable on adjoining and nearby properties, showing compliance with all relevant development standards and controls (including in terms of indicative residential layouts, parking provisions, tree canopy coverage, common open space and building envelopes showing likely separation, visual bulk, privacy and solar access impacts). In the case of the immediately locality, the following should be provided:

- A detailed existing site and character analysis of immediate locality including building types, subdivision patterns and development potential.
- Detailed envelope modelling of development within the vicinity that responds to the desired future character in accordance with the "low and mid rise housing" and "in fill affordable housing" provisions, noting likely amalgamation by the University of NSW properties.
- Detailed indicative building layouts from the modelled envelopes.
- Detailed building separation analysis to demonstrate that ADG separation requirements can be achieved between the subject site and adjoining sites.
- Detailed privacy and solar analysis and modelling of future building modelling.
- An analysis of whether sufficient building separation can be achieved between that site and the subject site in line with the requirements of the Housing SEPP and ADG.

The concept development application fails to address the required matters of consideration relating to the site-specific DCP block requirements in section 6.12(4) of RLEP 2012.

The Applicant also relies on the deferred Planning Proposal to demonstrate that the subject block is under transition (bounded by Arthur Street, Wansey Road, High Street, Botany Road), which envisioned a maximum FSR of 3.1:1 and maximum building height of 26m.

Council asserts that the provision in the RCPP related to the subject block were deferred from gazettal in Amendment 9 of RLEP 2012 and holds no statutory weight as a matter of consideration of this development application.

That being said, Council also contests that the Applicant's reliance on the deferred Planning Proposal (and proposed maximum FSR of 3.1:1 and maximum building height of 26m) is flawed, in that the proposed concept development application fails to acknowledge or design for the proposed uplift which incorporates the detailed strategic intent and justification for the uplift through the concept block plan in the "Arthur Street Housing Investigation Area Urban Design Report".

Whilst the Applicant in part relies upon the deferred Planning Proposal FSR and Building Height development standards, the concept development application fails to address how the proposal incorporates the strategic intent and design outcomes of the deferred block. This is, the concept development application has disregarded the integrated public domain, access, and urban design measures that formed an essential component of a HIA framework, including coordinated pedestrian and visual connections, public domain upgrades, landscape structure, deep soil networks, and block-wide permeability outcomes. See Figure 14 below for a plan showing such block plan considerations.

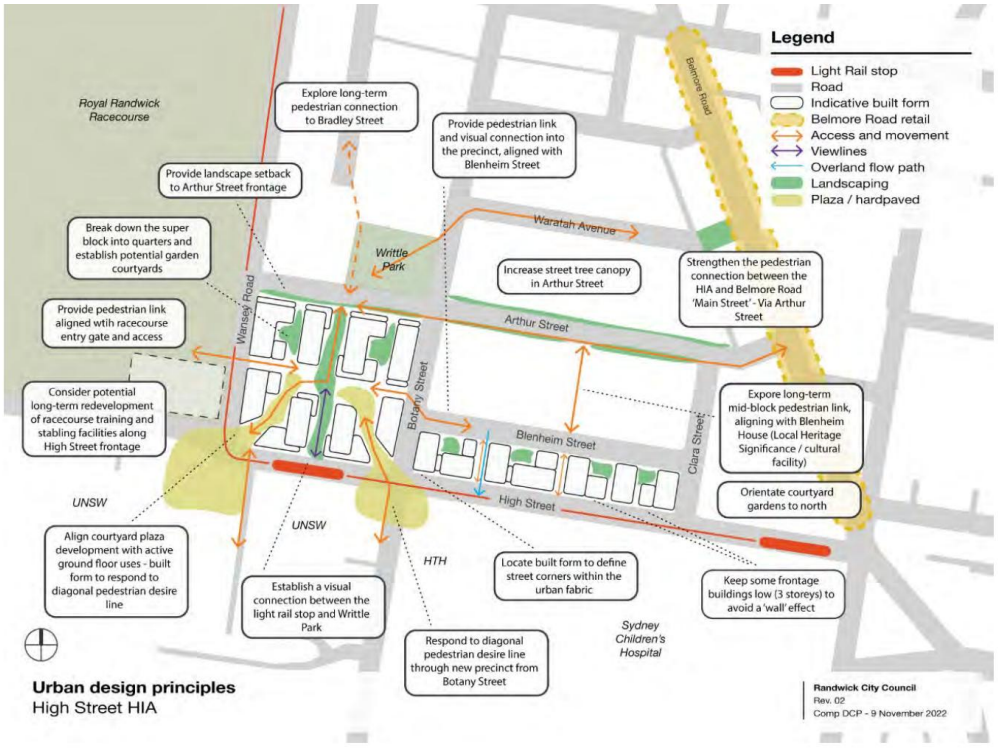


Figure 14: Arthur Street Housing Investigation Area Urban Design Principles Plan (Source: Randwick City Council)

This selective nature of the application is inconsistent with orderly and strategic planning principles, as it isolates the benefits of uplift from the corresponding design and infrastructure obligations intended to accompany it.

The Applicant has failed to adequately consider and demonstrate what is the desired future character of development within the precinct. Council does not consider that the proposed development is in keeping with the desired future character of development in the area and therefore the scale of the proposed development is unacceptable.

As such, it is recommended that the development application be refused.

Car Parking

For the purpose of the Traffic Impact Assessment (TIA) the following mix has been considered:

- a co-living development of 41 rooms;

- a residential flat building development of 11 x 1 bedroom, 37 x 2 bedroom and 12 x 3 bedroom dwellings;
- of the above there will 14 affordable residential dwellings and 48 market residential dwellings.

Calculated parking provision required under SEPP (Housing) 2021 is 55 spaces for the residential development and 8 spaces for the co-living.

The TIA states that this is a worse case parking provision and traffic impact scenario, however insufficient information is provided to assess this assumption.

- No carpark layout is provided to determine if the TIA's nominated worst case can be accommodated within the development site and be in full compliance with relevant Australian Standards.
- The assumed worst case parking provision complies with the SEPP (Housing) 2021 however is not compliant with Council's DCP Affordable and Non-Affordable (in-fill) parking requirements.
- The assumed worst case parking provision complies with the SEPP (Housing) 2021 however is not compliant with Council's Draft DCP parking requirements for residential flat buildings.
- No visitor parking is proposed.
- The development application does not indicate other potential components of the development that may need to be accommodated in the basement car parks.

As such, it is recommended that the development application be refused.

Tree Canopy

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

Table 6 and 7 in the Tree Canopy Guide requires the following minimum landscaping components:

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

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

Table 7. Tree canopy and deep soil (residential flat buildings and shop-top housing – enhanced)

Site area	Tree canopy (min % site area)	Deep soil (min % site area)	Tree planting rate
<650 m²	15%	7%	For every 350 m² of site area or part thereof, plant at least one small tree in the deep soil area.
650-1,500 m²	15%	10%	For every 350 m² of site area or part thereof, plant at least one medium tree in the deep soil area.
>1,500 m²	20%	15%	For every 575 m² of site area, or part thereof, plant at least 2 medium trees or one large tree in the deep soil area.

Pursuant to Part 3E-1 of ADG, the minimum deep soil zones and minimum dimensions are as follows:

Design criteria

1. Deep soil zones are to meet the following minimum requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
less than 650m²	-	7%
650m² - 1,500m²	3m	
greater than 1,500m²	6m	
greater than 1,500m² with significant existing tree cover	6m	

The proposed concept development application notes that residential flat building component is capable of achieving a minimum 5% deep soil area and 15% tree-canopy coverage.

Council asserts that as the site is 2,767sqm, the site should be delivering a minimum deep soil area of 15% deep soil zones with a minimum width of 6m and a minimum canopy tree coverage of 20%.

Having regard to the above concerns, Council contends that the proposed development will not achieve the minimum deep soil and tree canopy coverage design criteria.

The failure to provide sufficient tree canopy coverage within the site will impact upon the quality of life and attractiveness of the town centre, as well as failing to bring about relevant environmental benefits.

Construction Traffic Management

The development site can only be accessed from Arthur Street and then along Wansey Lane and Arthur Laneway.

Wansey Lane and Arthur Laneway are relatively narrow carriageways that serve other residential developments and should not be blocked to through traffic as a result of construction activities.

No construction traffic can access the site from High Street due to Light Rail infrastructure. As such, no construction activities or Works Zone can be positioned within High Street.

The TIA fails to detail how construction traffic will access the development site without having an adverse impact on the operation of the laneways.

The TIA fails to detail how construction activities will be carried out without having an adverse impact on the operation of the laneways.

Council notes that construction traffic can only access the site from Athur Street then travelling along Wansey Lane and Arthur Laneway, and no indictive Construction Traffic Management Plan (CTMP) has been provided.

Insufficient Information

A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted with the development application, including the following matters:

a) FSR/GFA Plans

- The development application does not facilitate the calculation of the gross floor area and floor space ratio of the proposal is not supported by indicative detailed floor plans and corresponding gross floor area calculation plans.

b) Indicative Building Layouts

- The development application cannot be properly assessed because detailed indicative building layouts from the modelled envelopes have been not provided, which are required in order to determine the appropriateness of the envelopes to support sufficient resident amenity.

c) *Arborist Report*

- The development application cannot be properly assessed because an Arborist Report has not been provided identifying, categorizing, prioritising all relevant trees, as well as the potential impacts, encroachments, recommended mitigation measures and similar, as detailed in parts 2.2.2 – 2.2.6 of 'AS4970-2025: Protection of trees on development sites'.

d) *Geotechnical Investigation Report*

- The development application cannot be properly assessed because a Geotechnical Investigation Report has not been provided addressing the relevant matters of consideration under clause 6.2 of RLEP 2012.

e) *Photomontage*

- The development application cannot be properly assessed because a photomontage has not been provided showing what the massing of the development will look like from relevant vantage points within the vicinity including, but not limited to, the High Street, Arthur Street and the Council laneway at 10R Arthur Street.

f) Design *Analysis*

- The development application cannot be properly assessed because a contextual analysis or urban design report has not been provided to assess and determine how the locality will transition in form and scale as a result of the 'low and mid rise housing inner area' in accordance with Chapter 6 of the Housing SEPP. Such analysis should include but not be limited to topography and slope; block grain and lot rhythm; built form typologies and prevailing setbacks; transition between low-rise dwellings and mid-rise forms; and landscape character and canopy pattern.

g) *Modelling*

- The development application cannot be properly assessed because detailed modelling has not been provided of potential future redevelopment on all adjacent and nearby sites, demonstrating likely envelope outcomes under comparable controls. This should include, but not be limited to, indicative envelopes with detailed separation analysis, privacy analysis, solar access analysis, indicative layout, basement configuration, as well as amalgamation of sites owned by the University of UNSW.

10. Conclusion

That the application for the Concept Development Application for a mixed-use development comprising a 7-storey co-living housing development to the High Street frontage and two 8-storey residential flat buildings to the rear, incorporating infill affordable housing, identification of two levels of basement parking, communal open space and associated landscaping and civil works, at 38 High Street Randwick be refused for the reasons listed in the recommendation section.

Appendix 1: Referrals

1. External Referral Comments:

1.1. Randwick Design Excellence Advisory Panel

Randwick Design Excellence Advisory Panel

Final Endorsed Comments

DA INFORMATION	
Application Number	DA/36/2026
Address	38 High Street, Randwick
Meeting Date	16.03.2026
Panel Members	Aldo Raadik (Chair), Linda Gosling, Connie Argyrou
Report Date	20.03.2026

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.

PANEL COMMENTS

The panel have undertaken a review of the proposed Concept DA and have highlighted the following to be addressed prior to approval.

The Application relies on Council's High Street HIA which is currently deferred for this block. (bounded by Arthur Street, Wansey Road, High Street, Botany Road)
The Application also relies on LMR provisions, affordable housing provisions and Co living provisions for uplifts and exceedances applied to the deferred HIA.
Clause 4.6 variations have been prepared for the above.

The Panel noted that the proposal is a significant key site, being central to the block
The presentation by the applicant was for a Concept DA only.
This presentation stated that the Concept DA was based on a reversed (simplified) DA application for a detailed scheme. No background or further detail was provided.
This suggests that no significant design options or flexibility will be available for the final design.

The Panel suggested that a Concept DA requires contextual sites analysis, design options (sketches and multiple exploratory options), reference schemes or other demonstration of the design logic to explain the reasoning for the design outcome.
The Panel concluded that the Concept DA presentation was insufficient for assessment of its merits.

1. Context and Neighbourhood Character

The Concept scheme does not indicate how it interacts with or acknowledges the principles of the Randwick HIA concept plan it refers too, or the Draft DCP for the HIA
A sufficient context analysis was not provided to support the Concept DA assumptions and outcome.

2. Built Form and Scale

The Concept DA does not demonstrate how it might achieve ADG compliances or how it would affect or be affected by neighbouring contextual development.
The massing is large and continuous to the southern building and does not indicate how it defines public domain, contributes to streetscape characteristics, private or public amenity, pedestrian through routes towards Arthur Street and Writtle Park and vehicle access points,
The North building requires explanation of how this form interacts , resolves and contributes to the Laneway context.
The residential and Co-living uses in the single mass building add to questions about how the loss of an external wall face might be dealt with for quality living space planning.

3. Density

Not provided – unable to be evaluated for design excellence
Raises concerns over site and contextual density considerations for future quality detailed design

4. Sustainability

Not provided– unable to be evaluated for design excellence

5. Landscape

Not provided – unable to be evaluated for design excellence

6. Amenity

Not provided – unable to be evaluated for design excellence

7. Safety

Not provided – unable to be evaluated for design excellence
The panel notes that opportunities for passive surveillance of public and private spaces exist with the detailed design if there is increased porosity of the building masses and a design response to the ground plane which offers attractive Common Open Spaces.

8. Housing Diversity and Social Interaction

Not provided at this submission stage – unable to be evaluated for design excellence

9. Aesthetics

Not provided at this submission stage – unable to be evaluated for design excellence

SUMMARY

The Proposal does not demonstrate or justify how it can deliver significant uplift for this site, nor the ability for Design Excellence in the detailed design.

1.2. Ausgrid

D26/26

TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au

24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 13 13 65
ausgrid.com.au

This letter is Ausgrid's response under section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Ausgrid consents to the development subject to the following conditions: -

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Ausgrid Underground Cables are in the vicinity of the development.

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Before You Dig Australia (BYDA)

In addition to BYDA the proponent should refer to the following documents to support safety in design and construction:

SafeWork Australia – Excavation Code of Practice.

Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Should ground levels change above Ausgrid's underground cables in areas such as footpaths and driveways, Ausgrid must be notified, and written approval provided prior to the works commencing.

Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

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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.

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

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1.3. Sydney Airport Corporation

D26/26

Reg No.: 26/0234 Wednesday, 18 March 2026

To: RANDWICK CITY COUNCIL & NSW PLANNING PORTAL

Notice to Proponent of Property Development

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

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

Proposed Activity:	PROPERTY DEVELOPMENT
Location:	38 HIGH ST RANDWICK (CONCEPT DA 36/2026)
Proponent:	RANDWICK CITY COUNCIL & NSW PLANNING PORTAL
Date:	18/03/2026

Sydney Airport received the above application from you.

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

The application sought approval for the PROPERTY DEVELOPMENT to a height of 85.77 metres Australian Height Datum (AHD).

In my capacity as Airspace Protection Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 85.77 metres AHD.

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

Sydney Airport

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

SYD Classification: Confidential

D26/26

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

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

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

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

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

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

The height of the prescribed airspace at this location is 89.00 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones:

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

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

Sincerely,



Leanne Grech
Senior Airspace Protection Officer

D26/26

Note:

1. a person who conducts a controlled activity otherwise than with an approval commits an offence against the Act.
   - s. 183 and s. 185 Airports Act 1996.
   - Penalty: 250 penalty units.
2. if a structure is not authorised, the Federal Court may order a person to carry out remedial works, mark or light, or reduce the height of or demolish, dismantle or remove a structure.

D26/26

1.4. Sydney Water Corporation

20 March 2026 **Our reference:** N/A

William Joannides
Randwick City Council
william.joannides@randwick.nsw.gov.au

RE: Concept Development Application DA/36/2026 at 36-38 High Street, Randwick (A-116539/CNR-93136)

Thank you for notifying Sydney Water of DA/36/2026 at 36-38 High Street, Randwick, which proposes the construction of a 7-storey co-living housing component and two 8-storey residential flat building components, altogether comprising a potential 101 dwellings. Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

Water and Wastewater Servicing

- Our preliminary assessment indicates that water and wastewater servicing should be available for the proposed development.
- Amplifications, adjustments, deviations and/or minor extensions may be required.
- Detailed requirements will be provided at the Section 73 application stage for the future detailed DA.

Ventshaft

- It is understood that a 9 metre ventshaft is located on site and that the proposed development will have a maximum height of building of 27.75 metres.
- The ventshaft must be replaced with a ventshaft that adheres to Sydney Water's Technical Guidelines – Building over and adjacent to pipe assets.
- This includes a requirement for the terminating level of the ventshaft to be 2 metres higher than any habitable space. The termination height of the ventshaft must not impact the proposed development or surrounding development.
- **An Odour Risk Assessment must be undertaken to assess potential odour impacts of the replacement ventshaft. This should be undertaken prior to the lodgement of a detailed DA, allowing the results of the Odour Risk Assessment to inform any design changes if required.**

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

D26/26

Next steps

- Should Council decide to progress with the subject development application, Sydney Water would require the following condition be included in the development consent:
  - Requirement for an Odour Risk Assessment
- The proponent is advised to engage a Water Servicing Coordinator and obtain an Odour Risk Assessment for the replacement ventshaft. This Odour Risk Assessment should be submitted to Sydney Water for review via an Adjustment/Deviation application. This should be completed prior to the lodgement of the Detailed DA, allowing the results of the Odour Risk Assessment to inform any design changes if required.
- Council is advised to forward the enclosed Sydney Water Development Application Information Sheet (for proponent) to assist the proponent in progressing their development. This Info Sheet contains details on how to make further applications to Sydney Water and provides more information on Infrastructure Contributions.

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the detailed DA is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the Land Development Manual.

Council can read further advice on requirements for this proposal in Attachment 1. Should Council require further information, please contact Fiona Feng from the Growth Analytics Team at urbangrowth@sydneywater.com.au.

Yours sincerely,

Growth Analytics Team
Growth and Development, Water and Environment Services
Sydney Water, 1 Smith Street, Parramatta NSW 2150

Enclosed:

- Sydney Water Development Application Information Sheet (for proponent)

D26/26

Attachment 1 – Recommended Development Conditions

Prior to lodgment of a Detailed DA

Requirement for an Odour Risk Assessment

The proponent is advised to engage a Water Servicing Coordinator and obtain an Odour Risk Assessment for the replacement ventshaft. This Odour Risk Assessment should be submitted to Sydney Water for review via an Adjustment/Deviation application. This should be completed prior to the lodgement of the Detailed DA, allowing the results of the Odour Risk Assessment to inform any design changes if required.

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

1.5. Transport for NSW

Transport for NSW

NSW GOVERNMENT

D26/26

20 March 2026

Mr William Joannides
Senior Development Assessment Planner
Randwick City Council
30 Frances Street
Randwick NSW 2031

Dear Mr Joannides

Development Application for 38 High Street, Randwick (DA/36/2026)
Concurrence Letter

Thank you for your correspondence via the ePlanning portal (ref: CNR-93136) on 9 March 2026, requesting Transport for NSW (TfNSW) to provide concurrence, pursuant to the provisions of the State Environmental Planning Policy (Transport & Infrastructure) 2021 (T&ISEPP).

Excavation adjacent to the Proposed Development

Comment

The proposed development is located within 25m of the Sydney Light Rail corridor and includes excavation / ground penetration deeper than 2m, which requires concurrence from TfNSW in accordance with Clause 2.99 of the T&ISEPP. Clause 2.99 of the T&ISEPP requires TfNSW to take into consideration:

(a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:

i. the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and

ii. the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and

(b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

Recommendation

The applicant must ensure the safety and structural integrity of the Sydney Light Rail through all phases of the development. Relevant design standards and guidelines should be adhered for the preparation of the documents associated with the development application for the detailed design.

It is noted that the Statement of Environmental Effects (SEE) does not include an assessment of the impacts of the proposal in accordance with Clause 2.99 of the T&ISEPP. This should be addressed in any future applications.

Transport for NSW
20-44 Ennis Road, Milson Point NSW 2061 | PO Box K659, Haymarket NSW 1240
T 02 8202 2200 | **F** 02 8202 2209 | **W** transport.nsw.gov.au | ABN 18 804 239 602

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D26/26

Concurrence to the Proposed Development

TfNSW has undertaken an assessment of the information provided in accordance with the provisions outlined in the T&ISEPP and has decided to grant concurrence to the development proposed in development application DA/36/2026 subject to Council imposing the following condition:

- Future applications seeking consent for actual works should explicitly include an assessment of the impacts on the Sydney Light Rail as per the requirements in clause 2.99 of the T&ISEPP. The applicant would be expected to comply with the requirements of ASA standards T HR CI 12090 ST Airspace and External Developments version 1.0 and Development Near Rail Corridors and Busy Roads - Interim Guidelines.

Should Council choose not to impose the above condition (as written), then concurrence from TfNSW has not been granted to the proposed development.

In the event that this development proposal is the subject of a Land and Environment Court appeal, Council's attention is drawn to Section 8.12 of the Environmental Planning and Assessment Act 1979, which requires Council to give notice of that appeal to a concurrence authority. TfNSW therefore requests that Council comply with this requirement should such an event occur.

Thank you again for the opportunity of providing advice for the above development application. If you require further clarification regarding this matter, please don't hesitate to contact Mark Ozinga on 0439 489 298.

Yours sincerely

RJCumming

Rachel Cumming
Director Technical Advice and Development Services
Planning, Integration and Passenger Division

Objective Reference CD26/00933

2. Internal Referral Comments:

2.1. Development Engineering

Council's Development Engineer has raised concerns regarding stormwater draining, car parking and construction traffic management, as detailed throughout this report.

2.2. Development Landscaping

Comprises a 'Concept DA only' so as expected, has not been furnished with the finer, higher level details that would normally accompany any other standard DA of this size and type.

Indicative footprint would achieve compliance with 7% of site area as Deep Soil as required by Part 3E-1 of the ADG. However, on larger sites greater than 1,500sqm (this one being 2,767sqm), Design Guidance recommends a provision of 15% Deep Soil. Retention of existing canopy cover can also be considered. Applicant needs to clarify what they will provide as well the scope of works at surface level and below.

Further, Table 7 of the LMR (RFB & Shop Top Housing – Enhanced) also requires the following for a Site Area greater than 1,500sqm: 20% Tree Canopy, 15% Deep Soil. Onus is on applicant to demonstrate compliance.

Due to lack of information on these topics, it is not currently possible to determine with 100% accuracy whether the proposal would meet all of the LMR requirements, but can be easily addressed by more detailed plans.

No Landscape Plans have been provided so cannot determine how proposed development would be presented to frontages & neighbours; the quality of amenity/inclusions/facilities etc that will be afforded to future occupants; the configuration of Common & Private Open Space and similar. Indeed requires more detail before a proper assessment could be undertaken.

No Arborist Report has been provided but based on the proposed footprints & setbacks, and also assuming that the Basement Level/s would be contained within/beneath the above ground parts of the building/s, as is shown on the Section & Elevation Plan (dwg DA500), it appears that most of the existing established trees both within/around the perimeter of the development site as well as on neighbouring properties, close to the common boundaries could be retained in-situ, which would be a highly favourable outcome in such a highly urbanised setting.

A detailed AIA by a Level 5 Consulting Arborist would assist in identifying, categorizing, prioritising all relevant trees, as well as the potential impacts, encroachments, recommended mitigation measures and similar, as detailed in parts 2.2.2 – 2.2.6 of AS4970-2025: Protection of trees on development sites.

2.3. Environmental Health

Contaminated Land

A consent authority should not approve any development until they are satisfied that the land is not contaminated, as per the requirements outlined in section 4.6 of the *State Environmental Planning Policy (Resilience and Hazards) 2021.*

The applicant has submitted a Preliminary and Detailed Site Contamination Investigation Report (P&DSI), prepared by Geo-Environmental Engineering, dated 28/11/2025, Rev No. 0, that concludes that the site can be made suitable for the proposed development, without further assessment and/or remediation.

The submitted P&DSI is required to be updated to addressing the following matters, prior to it being accepted that the site can be made suitable for the proposed development:

- It is noted that the main results table is missing in the body of the report Pg. 53-54 of 63 contains the statement “INSERT TABLE 6”. This results table will have to be included in the final report.

- Provide further justification for the adoption of HIL-B.

- For the contaminants of potential concern (COPC) section the report should include that it has considered ‘emerging contaminants’ (i.e. PFAS) and confirm it has been screened out as a COPC.

- The final report documentation should confirm if any proposed excavation will intercept the water table and if construction dewatering is going to be required. If required the water quality must be assessed and a dewatering management plan prepared outlining the water treatment methodology (endorsed by Council) prior to discharge into Councils stormwater infrastructure. It is noted that water quality has not been assessed by the applicant at this time.

Construction Noise Vibration Management Plan (CNVMP)

As this is a medium density residential area the construction works will be considered high impact/risk for the use of intrusive appliances during demolition and excavation of the proposed basement levels.

A site-specific Construction Noise and Vibration Management Plan will be required to be developed for the site and implement best practice control measures to reduce the impact for nearby noise sensitive receivers. The report should justify that all reasonable and feasible control measures have been implemented should there be predicted exceedances in the noise management levels for the site.

Respite periods should also be nominated in consultation with affected stakeholders and included in the CNVMP.

Operational Noise and Natural Ventilation Requirements

The consent authority must ensure approved development creates suitable amenity in terms of both natural ventilation and acoustic amenity, which can be a challenge for sites in noise-affected areas. Achieving natural ventilation and protection from noise is not mutually exclusive but does require innovation; compliance with both natural ventilation and internal noise levels must be demonstrated concurrently, as each has influence over the other and needs to be considered in unison when assessing a development application.

Detailed acoustic and natural ventilation requirements are required to be addressed in the future detailed development application.

Groundwater – Construction dewatering

Should the excavation of the proposed basement levels intersect the water table and construction dewatering is required the applicant will either have to apply for a Section 68 Local Approval or have the water tanked offsite to an appropriately NSW EPA licensed waste facility.

Plan of Management

A plan of management will need to be submitted for the co-living development in the future detailed development application. Detailing onsite management controls for communal areas in particular outdoor areas, house rules and permitted hours for communal outdoor areas etc.

An on-site manager should be available onsite 24 hours, and a specific room provided.

2.4. Strategic Planning

Strategic Basis for Deferral and UNSW Position

The block was expressly deferred from the Arthur Street Housing Investigation Area (HIA) following a submission from UNSW, the majority landowner, who did not support the HIA's proposed development outcomes and requested further investigation of the block's longer-term strategic potential.

Council's 30 August 2022 Report to the Extraordinary Council Meeting confirmed that the block's urban design success "largely depends on the consolidation of lots, including the UNSW owned land," and that proceeding with uplift on individual parcels "may result in further fragmentation with new apartment or co-living development occurring on remnant parcels," undermining the intended coordinated precinct outcomes.

The Application ignores this strategic context, seeking mid-rise scale development on a single lot that pre-empts block-wide planning, frustrates land consolidation, and risks fragmented, suboptimal outcomes. It therefore fails to respect the strategic reasons for the block's deferral and the planning intentions of Council, and must be refused.

Requirement for a Block-wide Framework under Randwick LEP cl 6.12

Clause 6.12 of the RLEP mandates a site-specific development control plan or equivalent guidelines addressing building envelopes, public domain improvements, sustainable transport integration, land use distribution, access and circulation networks, staging, landscape structure, deep soil zones, environmental constraints, and the relationship of development across the entire block, reflecting the strategic reasons for deferral.

The 30 August 2022 Council Report expressly recognises that successful redevelopment of the block requires consolidation of lots and coordinated planning between UNSW and other landowners, rather than isolated, single-lot development, and warns that proceeding without such coordination "may result in further fragmentation… on remnant parcels."

The Application, by relying on a single-lot DA rather than a precinct-wide DCP, is deficient because it proposes a mid-rise envelope in the centre of the block that pre-empts block-wide planning, predetermines built form outcomes, forecloses opportunities for consolidation, and inhibits adjoining lots from achieving orderly and ADG-compliant redevelopment.

As such, the Application does not satisfy cl 6.12(3)(b) or the block-wide planning objectives under cl 6.12(4), is incapable of meeting the coordinated framework intended by the RLEP, and is inconsistent with the Council's strategic reasons for deferral. Consent should therefore be refused on this basis.

The subject site is located within a Deferred Area to which clause 6.12 applies, requiring development to occur in a coordinated and precinct-wide manner.

The subject block forms part of a broader area identified for integrated planning, and a single-lot development application is inherently incapable of delivering orderly outcomes or appropriate integration with the wider block. Approval of the Application would therefore pre-empt and undermine the coordinated planning framework envisaged by clause 6.12.

The proposal constitutes a piecemeal, single-lot development that is not supported by any site-specific development control plan or equivalent framework as required under clause 6.12(4).

The Application, including the co-living component, relies on built form assumptions and planning parameters derived from the Arthur Street HIA material, despite that land being expressly excluded from the relevant planning proposal and not subject to those controls. That HIA material has no statutory force in relation to the subject site and represents only a contingent and unimplemented planning scenario.

The Applicant's reliance on selected aspects of that material, including height, floor space ratio, and mid-rise massing, to justify the scale of the residential and co-living components is misplaced and should be afforded little or no weight.

In the absence of an adopted precinct-wide framework under clause 6.12, the proposed scale and form of development is premature and inconsistent with the planning controls applying to the land.

2.5. Heritage Planning

Council's Heritage Planner has confirmed that the proposed development will not impact upon the significant of any heritage items or heritage conservation areas within the vicinity of the site.

Appendix 2: Applicant's Written Requests Seeking to Justify the Contravention of Development Standards

1. **Clause 4.6 Statement to Vary Building Height Development Standard (Co-Living Housing)**

2. **Clause 4.6 Statement to Vary Floor Space Ratio Development Standard (Co-Living Housing)**

3. **Clause 4.6 Statement to Vary Building Height Development Standard (Residential Flat Building)**

4. **Clause 4.6 Statement to Vary Floor Space Ratio Development Standard (Residential Flat Building)**

Please refer to attachments at the end of this report.

D26/26

Appendix 3: Housing SEPP 2021 Compliance Tables

1. Part 2, 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	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(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).	3.28:1 (9089sqm)	No, see Clause 4.6 Assessment
(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— affordable housing component = additional floor space ratio (as a percentage) ÷	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).	27.95m	No, see Clause 4.6 Assessment
(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 = 2767.9sqm	Yes, complies
(b) a minimum landscaped area that is the lesser of— (i) 35m2 per dwelling, or (ii) 30% of the site area,	Unclear if capable of compliance.	No, see Key Issues

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
(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,	Unclear if capable of compliance.	No, see Key Issues
(f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	Unclear if capable of compliance.	No, see Key Issues
(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(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—65m2, (ii) for each dwelling containing 2 bedrooms—90m2, (iii) for each dwelling containing at least 3 bedrooms—115m2 plus 12m2 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.	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—	Council is not satisfied that as the area is undergoing transition, the proposed development is	No, see Key Issues

Standard	Proposal	Compliance
Part 2: In-fill affordable housing		
(a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	compatible with the desired future character of the precinct.	
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. Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	Conditional.
(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. Part 3, Chapter 3 'Co Living Housing' Compliance Table

Standard	Proposal	Compliance
Part 3: Co-living housing		
67 Co-living housing may be carried out on certain land with consent		
Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing is permitted under another environmental planning instrument, or development for the purposes of residential flat buildings or shop top housing is permitted under Chapter 5 or another environmental planning instrument.	RFB development permitted in Zone R3, so co-living development is permitted development as per this SEPP clause.	Yes, complies
68 Non-discretionary development standards—the Act, s 4.15		
(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—		
(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,	Maximum FSR = 0.825:1 (including 10% bonus for co-living). Proposal = 3.28:1 (9089sqm)	No, see Clause 4.6 Assessment
(c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m2 of communal living area plus at least a further 2m2 for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(d) communal open spaces— (i) with a total area of at least 20% of the site area, and	2,767m^2 * 0.2 = 553.4m^2 required.	No, see Key Issues

Standard	Proposal	Compliance
Part 3: Co-living housing		
(ii) each with minimum dimensions of 3m,	Unclear if capable of compliance.	
(e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	Minimum = 0.2 spaces per private room. Unclear if capable of compliance.	No, see Key Issues
69 Standards for co-living housing		
(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—		
(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m2 and not less than— (i) for a private room intended to be used by a single occupant—12m2, or (ii) otherwise—16m2, and	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(b) the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m2, or (ii) for development on other land—**800m2**, and	2767.9sqm	Yes, complies
(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	N/A – residential zone.	N/A
(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(g) each private room will be used by no more than 2 occupants, and	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—		
(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	Inadequate separation provided. See Key Issues for detailed assessment. Proposed = 3m to GF, 6m to 1F-6F.	No, see Key Issues

Standard	Proposal	Compliance
Part 3: Co-living housing		
(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	Unclear if capable of compliance.	No, see Key Issues
(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	The design of the development is incompatible with the desired future character of the precinct.	No, see Key Issues
70 No Subdivision		
Development consent must not be granted for the subdivision of co-living housing into separate lots.	No subdivision proposed.	Yes

3. 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,	Unclear if capable of compliance.	N/A
(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,	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
(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.	Proposal demonstrates F2F heights of 3.2m, sufficient to provide a 2.7m F2C height for habitable rooms with sufficient space for services and flooring. Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A

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

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

Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
(1) This section applies to land in a low and mid rise housing outer area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site falls within a low and mid rise housing outer area in Zone R3 Medium Density, being land within 800m walking distance of the 'Randwick town centre and light rail station'.	Yes, complies
(2) Development consent must not be granted for development for the following purposes if a resulting building will have a building height of up to 17.5m unless the consent authority is satisfied that the building will have 4 storeys or fewer— (a) residential flat buildings, (b) buildings containing shop top housing.	Proposal = 8 storeys	No, see Clause 4.6 assessment
177 Landscaping—residential flat buildings or shop top housing		
(1) This section applies to land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	The site falls within a low and mid rise housing outer area in Zone R3 Medium Density.	Yes, complies
(2) Development consent must not be granted for development for the purposes of residential flat buildings or shop top housing unless the consent authority has considered the *Tree Canopy Guide for Low and Mid Rise Housing*, published by the Department in February 2025.	Unclear if capable of compliance.	No, see Key Issues
178 Minimum lot size for residential flat buildings or shop top housing		
(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	Proposal is for a component of a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes, complies
(2) A requirement specified in another environmental planning instrument or development control plan in relation to the following does not apply to development that meets the standards in section 180(2) or (3)— (a) minimum lot size, (b) minimum lot width.	Noted – however proposal seeks consent using the 'infill affordable housing' provisions of the SEPP, which are relevant in terms of minimum lot size in this case. Noted regarding minimum lot width.	N/A, see Appendix 3 for details on lot size min requirement.
Division 2 Non-discretionary development standards—the Act, s 4.15		
180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4		
(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.	Proposal is for a component of a residential flat building in a low and mid rise housing area in R3 Medium Density Residential.	Yes, complies
(3) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing outer area—		

Standard	Proposal	Compliance
Part 4 'Residential flat buildings and shop top housing'		
(a) a maximum floor space ratio of 1.5:1,	3.28:1	No, see Clause 4.6 assessment
(b) a maximum building height of 17.5m.	27.95m	No, see Clause 4.6 assessment

Appendix 4: Apartment Design Guide Compliance Table

<table>
<tr><th>Clause</th><th>Design Criteria</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td colspan="4">Part 3: Siting the Development</td></tr>
<tr><td>3D-1</td><td colspan="3">Communal and Public Open Space</td></tr>
<tr><td></td><td>Communal open space has a minimum area equal to 25% of the site.</td><td>Applicant has indicated that over 1,226sqm of the site area to be provided as COS.

Council questions the accuracy of this the quality of such spaces in considering the northern RFB will largely overshadow large areas indicated for COS.</td><td>No, see Key Issues</td></tr>
<tr><td></td><td>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).</td><td>Achievable, however will likely be overshadowed as a result of future development in the LMR.</td><td>No, see Key Issues</td></tr>
<tr><td>3E-1</td><td colspan="3">Deep Soil Zone</td></tr>
<tr><td></td><td>Deep soil zones are to meet the following requirements: 6m dimension, 7% site area</td><td>As above, unclear how much and where it will be delivered on site, including 6m dimensions.</td><td>No, see Key Issues</td></tr>
<tr><td>3F-1</td><td colspan="3">Visual Privacy</td></tr>
<tr><td></td><td>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><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>
Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)

Gallery access circulation should be treated as habitable space when</td><td><u>Southern Building</u>
Eastern and western side boundaries:
1-4 storeys: 3m – 6m.
5-8 storeys: 5m – 9m.
Northern boundary:
1-4 storeys: 6m.
5-8 storeys: 9m.
<u>Northern Building</u>
Southern boundary:
1-8 storeys: nil setback.
Eastern boundary:
1-8 storeys: nil – 1m.
Western boundary:
1-4 storeys: 6m.
5-8 storeys: 9m.
Eastern boundary:
1-4 storeys: 6m.</td><td>No, see Key Issues.</td></tr>
</table>

Clause	Design Criteria	Proposal	Compliance
	measuring privacy separation distances between neighbouring properties.	○ 5-8 storeys: 9m.	
3J-1	**Bicycle and Car Parking**		
	For development in the following locations: • 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 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.	RFB parking rate as per in-fill affordable housing provisions. No visitor parking spaces indicated as being provided as per Guide to Traffic Generating Developments.	No, see Key Issues.
Part 4: Designing the Building			
4A	**Solar and Daylight Access**		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter.	Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide sufficient solar access to dwellings.	No, see Key Issues
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide sufficient solar access to dwellings.	No, see Key Issues
4B	**Natural Ventilation**		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide sufficient natural ventilation to dwellings.	No, see Key Issues
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide	No, see Key Issues

<table>
<tr><th>Clause</th><th>Design Criteria</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td></td><td></td><td>sufficient natural ventilation to dwellings.</td><td></td></tr>
<tr><td>4C</td><td colspan="3">Ceiling Heights</td></tr>
<tr><td></td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:
Habitable Rooms – 2.7m
Non-habitable – 2.4m
Attic spaces – 1.8m at edge with min 30 degree ceiling slope
Mixed use areas – 3.3m for ground and first floor
These minimums do not preclude higher ceilings if desired.</td><td>Proposal demonstrates F2F heights of 3.2m, sufficient to provide a 2.7m F2C height for habitable rooms with sufficient space for services and flooring.

Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.</td><td>N/A</td></tr>
<tr><td>4D</td><td colspan="3">Apartment Size and Layout</td></tr>
<tr><td></td><td>Apartments are required to have the following minimum internal areas:
Studio - 35m^2
1 bedroom - 50m^2
2 bedroom - 70m^2
3 bedroom - 90m^2</td><td>Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.</td><td>N/A</td></tr>
<tr><td></td><td>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.</td><td>As above.</td><td>N/A</td></tr>
<tr><td></td><td>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</td><td>As above.</td><td>N/A</td></tr>
<tr><td></td><td>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</td><td>As above.</td><td>N/A</td></tr>
<tr><td></td><td>Master bedrooms have a minimum area of 10m^2 and other bedrooms 9m^2 (excluding wardrobe space).</td><td>As above.</td><td>N/A</td></tr>
<tr><td></td><td>Bedrooms have a minimum dimension of 3m (excluding wardrobe space.</td><td>As above.</td><td>N/A</td></tr>
<tr><td></td><td>Living rooms or combined living/dining rooms have a minimum width of:
3.6m for studio and 1 bedroom apartments
4m for 2 and 3 bedroom apartments</td><td>As above.</td><td>N/A</td></tr>
<tr><td></td><td>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</td><td>As above.</td><td>N/A</td></tr>
<tr><td>4E</td><td colspan="3">Private open space and balconies</td></tr>
<tr><td></td><td>All apartments are required to have primary balconies as follows:

<table><tr><td>Dwelling type</td><td>Minimum area</td><td>Minimum depth</td></tr><tr><td>Studio</td><td>4 m^2</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m^2</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m^2</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m^2</td><td>2.4m</td></tr></table></td><td>Compliance not demonstrated, plans appear to include building envelope as GFA, does not account for balconies, of which should be located within the respective envelopes to maintain sufficient</td><td>No, see Key Issues</td></tr>
</table>

Clause	Design Criteria	Proposal	Compliance
	The minimum balcony depth to be counted as contributing to the balcony area is 1m.	separation (and will likely not contribute to GFA).	
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.	Compliance not demonstrated, plans show all area outside the building envelope as COS, no indicative plans of dwellings provided showing POS on the ground floor.	No, see Key Issues
4F	**Common Circulation and Spaces**		
	The maximum number of apartments off a circulation core on a single level is eight.	Compliance not demonstrated.	No, see Key Issues
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A	N/A
4G	**Storage**		
	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio apartments - 4m^3 • 1 bedroom apartments - 6m^3 • 2 bedroom apartments - 8m^3 • 3+ bedroom apartments - 10m^3 At least 50% of the required storage is to be located within the apartment.	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A

Appendix 5: DCP Compliance Table

1.1. Part B3: Ecologically Sustainable Development

Council is satisfied that the proposed concept development application meets the relevant ESD requirements in accordance with Part B3 of RDCP 2013, subject to details in a future detailed development application.

1.2. Part B4: Landscaping and Biodiversity

Council is not satisfied that the proposed concept development application meets the landscape requirements in accordance with Section 177(2) of the Housing SEPP and the *Tree Canopy Guide for Low and Mid Rise Housing*, as well as Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer at the Appendix 1 section of this report.

1.3. Part B5: Preservation of Trees and Vegetation

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

1.4. Part B6: Recycling and Waste Management

Council is satisfied that the proposed concept development application meets the waste requirements in accordance with Part B6 of RDCP 2013, subject to details in a future detailed development application.

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

Council is not satisfied that the proposed concept development application meets the parking requirements in accordance with Section 19(2), 68(2)(e) and 148(2)(a) of the Housing SEPP. Refer to detailed assessment by Council's Development Engineer at the Appendix 1 section of this report and the Key Issues above.

1.6. Part B8: Water Management

Council is satisfied that the proposed development meets the water management requirements in accordance with Part B8 of RDCP 2013, subject to details in a future detailed development application.

1.7. Part B9: Management Plan

A Plan of Management has not been submitted by the applicant, however as a concept development application is considered not required at this stage.

1.8. Part C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2.	**Site Planning**		
2.2	**Landscaped open space and deep soil area**		
2.2.1	**Landscaped open space**		
	A minimum of 50% of the site area is to be landscaped open space.	Minimum = 1383.5sqm Proposed = 45% (buildings occupy 1,524.4sqm of 2,767sqm site area)	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
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 = 691.75sqm Proposed DSPA = 20.3% (being 100.2m^2).	No, see Key Issues
2.3	**Private and communal open space**		
2.3.1	**Private open space**		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	Compliance not demonstrated, plans appear to include building envelope as GFA, does not account for balconies and ground floor POS areas, of which should be located within the respective envelopes to maintain sufficient separation (and will likely not contribute to GFA).	No, see Key Issues
	For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m2 and a minimum dimension of 2m.	As above.	No, see Key Issues
2.3.2	**Communal open space**		
	Communal open space for residential flat buildings is to be: (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) Adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.	The proposed communal open space is not adequately sized and will likely be overshadowed from future development within the locality. The area has not been designed to incorporate any recreation uses and facilities.	No, see Key Issues
3.	**Building Envelope**		
3.3	**Building depth**		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal	Southern building dimensions of 63.2m and 17.4m (RFB) and 23.4m (CLH).	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
	amenity such as via cross-over, double-height or corner dwellings / units.	Northern RFB building dimensions of 16.1m and 19.2m. Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide sufficient natural ventilation to dwellings.	
3.4	**Setbacks**		
3.4.1	**Front setback**		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.	Proposed front setback of 3m to High Street. 34 High Street has a front setback of 3m. 42 High Street has a front setback of 6.2m. The applicant has failed to demonstrate that the proposed 3m front setback is appropriate in this block, based on the desired future character of the area, noting in particular that 42 High Street is a strata-subdivided RFB with 18 strata lots, which is currently unlikely to be redeveloped.	No, see Key Issues
3.4.2	**Side setback**		
	Residential flat building (i) Comply with the minimum side setback requirements stated below: - 20m and above: 4m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development	Side setbacks do not recognise of the intended scale and streetscape character. In addition, side setbacks do not achieve the ADG required separation distances. Whilst some portions of the building may comply with the setback controls in Part C2 of RDCP, this section of the RDCP does not envision residential flat buildings greater than 9.5 metres (or 3 storeys) in heights.	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
	and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. (iii) A fire protection statement must be submitted where windows are proposed on the external walls of a 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.	As such, the controls relate to a form significantly smaller than that proposed under the new "low and mid rise housing" provisions of the Housing SEPP.	
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.	The proposed rear setback is 6m from the northern rear boundary. That being said, see side setback assessment comments relevant to these controls.	See above.
4.	**Building Design**		
4.1	**Building façade**		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs.	Whilst further detail is to be provided at the detailed DA stage, the proposed concept DA lacks sufficient information to understand the resultant form.	No, see clause 6.11 of RLEP assessment above.
4.2	**Roof design**		
	(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three	Roof service area provided for each building, capable of	N/A

DCP Clause	Control	Proposal	Compliance
	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 are not readily visible from the public domain.	compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	
4.4	**External wall height and ceiling height**		
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Proposal demonstrates F2F heights of 3.2m, sufficient to provide a 2.7m F2C height for habitable rooms with sufficient space for services and flooring. Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
4.5	**Pedestrian Entry**		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Compliance not demonstrated, unclear as to how access to the 2x RFBs will be facilitated on the site, of which should be provided to High Street	No

DCP Clause	Control	Proposal	Compliance
		with CPTED considerations. Detail should be provided as part of the concept DA.	
4.6	**Internal circulation**		
	(i) Enhance the amenity and safety of circulation spaces by: - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units	Compliance not demonstrated, especially in relation to number of dwellings accessible from a single core.	No, see Key Issues
4.7	**Apartment layout**		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.	Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide adequate amenity to dwellings.	No
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.	Compliance not demonstrated, plans appear to include building envelope as GFA, does not account for balconies, of which should be located within the respective envelopes to maintain sufficient	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
		separation (and will likely not contribute to GFA).	
4.9	**Colours, materials and finishes**		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts (vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	N/A
4.12	**Earthworks**		
	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. (This does not apply to swimming or spa pool structures). iv) Setback the outer edge of any excavation, piling or sub surface walls a minimum of 900mm from the side and rear boundaries. The	Extent of indicative basement appears to be setback sufficiently from neighbouring sites.	Appears compliance, confirmation subject to detailed DA.

DCP Clause	Control	Proposal	Compliance
	thickness of retaining walls and indicative footing locations must be shown on the drawings.		
5.	**Amenity**		
5.1	**Solar access and overshadowing**		
	Solar access for proposed development		
	ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least three hours between 8am and 4pm on 21 June (mid winter).	Compliance not demonstrates, no indicative plans of dwelling provided showing that the massing and citing of the development will provide sufficient solar access to dwellings.	No, see Key Issues
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June. (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.	Submitted solar diagrams demonstrate that the proposed development will overshadow the living rooms windows and balconies adjoining dwellings, however the plans do not demonstrate the full impact of the overshadowing.	No, see Key Issues
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.	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	Satisfactory, subject to detailed DA.
5.3	**Visual privacy**		
	(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.	The lack of separation between the proposed development, its respective side and rear boundaries and buildings on site, results in unacceptable visual privacy. This includes from habitable windows and balconies.	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
	(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection		
5.5	**View sharing**		
	(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.	A detailed view impact assessment has not been with the submitted development application. The full extent of the impact on existing views is not known	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
	(vi) Clearly demonstrate any steps or measures adopted to mitigate 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.	Compliance not demonstrated, unclear as to how access to the 2x RFBs will be facilitated on the site, of which should be provided to High Street with CPTED considerations. Detail should be provided as part of the concept DA.	No
6.	**Car parking and access**		
6.1	**Location**		
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.	Southern building seeks 2x levels of basement parking. Northern building seeks at-grade parking, unclear why basement cannot be provided.	No
6.2	**Configuration**		
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls.	Compliance not demonstrates, no indicative plans of dwelling or number of parking spaces provided.	No, see Key Issues

DCP Clause	Control	Proposal	Compliance
	(e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.		

D26/26

1.9. Part C3: Adaptable and Universal Housing

DCP Clause	Control	Proposal	Compliance
3.	**Adaptable Housing**		
2.1	**Site Layout Options**		
	i) In addition to the requirements of clause 2(i) controls, a minimum **20% of dwellings** in new multi dwelling housing, shop top housing and residential flat buildings containing 10 or more dwellings must be adaptable dwellings and designed and constructed to a minimum Class C Certification under AS 4299 Adaptable Housing.	Capable of compliance. Compliance subject to a detailed DA, should the concept DA have been supported.	Satisfactory, subject to detailed DA.

1.10. Section F3: Sydney Airport Planning and Noise Impacts

DCP Clause	Controls	Proposal	Compliance
2	**Airspace operations**		
	i) Submit to Council accurate and detailed drawings clearly indicating the height levels (above AHD) of various roof elements (including parapet, lift overrun, roof ridge and roof-mounted installations) for referral to SACL. ii) Landscaping must consider bird and obstacle hazard management and ensure trees to be planted are not capable of intruding the Obstacle Limitation Surface when mature (ie over 15 metres). iii) Submit to Council details on the	DA supported by Sydney Airport Corporation. See Appendix 1 for details.	Yes, complies

	proposed height of any crane that may be used during construction works for referral to SACL.		

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/36/2026

D26/26

D26/26

DEVELOPMENT APPLICATION
36/2026
Randwick City Council
21 January 2026
Records Received

GYDE

Clause 4.6 Variation Request Height (Co-living)

36–38 High Street, Randwick

Submitted to Randwick City Council
on behalf of on behalf of CPDM High St Development DM Pty Ltd

17 December 2025

GYDE

D26/26

Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

This report was prepared by:

Approver:	Gannon Cuneo - Associate Director
Author:	Anthony Kazacos – Associate Director
Project:	Height of Buildings (Co-living Housing)
Report Version:	Final

This report was reviewed by: Gannon Cuneo – Associate Director

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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1. Introduction

This is a formal request that has been prepared in accordance with Clause 4.6 of the Randwick Local Environmental Plan 2012 (RLEP) to justify a variation to the Clause 4.3 - Height of Building standard. The Development Application is submitted to Randwick City Council seeking consent for a mixed-use concept development, comprising a 7-storey co-living housing component and 2 x 8-storey residential flat building components, at 36-38 High Street, Randwick (hereon referred to as the Concept DA). It is important to note, that this Clause 4.6 variation relates only to the co-living component of the development. A separate Clause 4.6 variation request has been prepared for the residential flat building component of the development as the variation relates to a different development standard.

Clause 4.3 of the RLEP requires that the height of buildings on the site does not exceed 9.5 metres when measured from existing ground level. The proposed development seeks consent for a 7-storey co-living building, with the maximum roof form and plant reaching up to RL 85.77. When measured from existing ground levels across the site, this equates to a building height that exceeds the 9.5 metre height standard by between 10.2 metres and 14.5 metres (maximum variation of 153%), depending on the specific location relative to the site's topography. The extent of departure from the height development standard is illustrated and quantified in Section 4 (Extent of Variation) of this request.

This request should be read in conjunction with the documents prepared in support of the DA lodged for the site, including the Statement of Environmental Effects (SEE) prepared by Gyde and the accompanying architectural drawings prepared by WMK Architecture.

This request has been prepared having regard to the NSW Department of Planning and Environment's Guidelines to Varying Development Standards (November 2023) and various recent decision in the New South Wales (NSW) Land and Environmental Court (LEC) and the NSW Court of Appeal (Appeals Court).

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying a certain development standard to development, in particular circumstances, and to achieve better outcomes for and from development.

For this reason, there is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6: GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]. As Commissioner Clay explained in his decision in SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, that the application of Clause 4.6 should not be constrained by a perceived maximum number by which a standard may be varied (this decision was upheld by the Chief Judge of the Land and Environment Court on appeal in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115).

In brief terms, the requirement to comply with the development standard is unreasonable and unnecessary in the circumstances because:

- The proposed variation enables the orderly and economic use and development of land through the redevelopment of an underutilised site for a much-needed diverse form of housing.
- The proposal will maximise the number of co-living housing and residential dwellings on the site in response to the current housing crisis with little to no unacceptable, or adverse environmental impacts. Specifically, the areas above the height plane do not cause adverse amenity impacts.
- The proposal will expand the current residential land use in a highly accessible location directly opposite the UNSW High Street Light Rail Station, consistent with Council's Planning Proposal vision for increased residential density and a mid-rise character along the High Street corridor.
- The proposal will continue to achieve the objectives of Clause 4.3, including ensuring that the height and scale of development are compatible with the desired future character of the locality, that visual bulk is appropriately minimised, that overshadowing and view impacts on neighbouring properties remain acceptable and that the development contributes to a high-quality built form outcome.

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This Clause 4.6 Variation Request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the contravention.

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2. Proposed Development

The proposal is for a mixed-use concept development, comprising a 7-storey co-living housing component and 2 x 8-storey RFB components, across 2 buildings, together with rooftop plant to a maximum height of RL 81.320. The concept identifies provision for basement parking, communal open space and associated landscaping and civil works.

This Clause 4.6 variation relates only to the co-living component of the development, with the figures outlined below provided specifically to illustrate the co-living envelope.

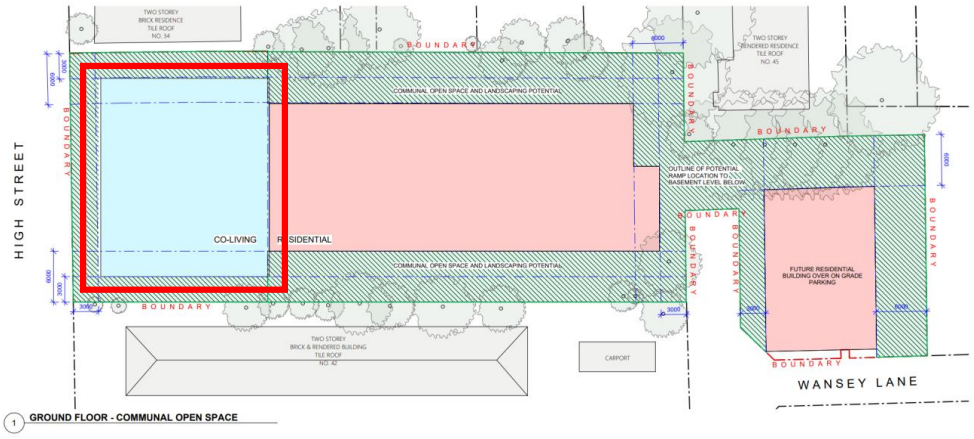


Figure 1 **Proposed ground level; co-living highlighted with red outline (Source: WMK Architecture)**

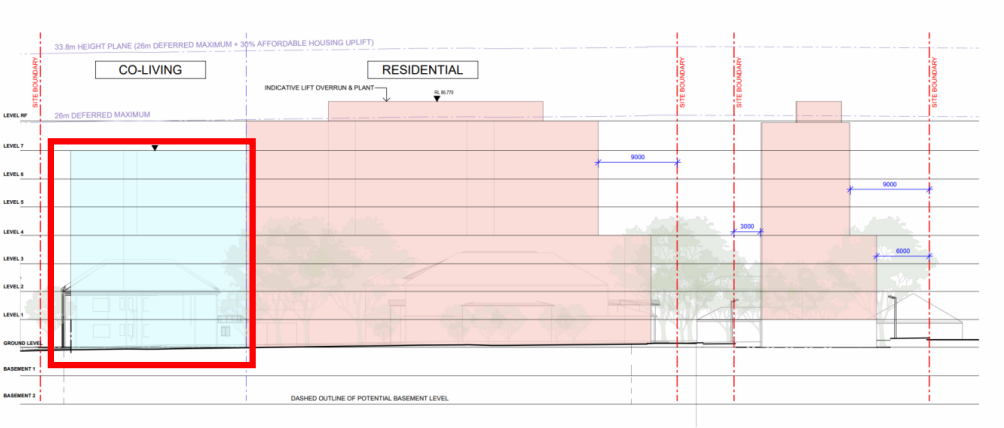


Figure 2 **Proposed concept envelopes; co-living highlighted with red outline (Source: WMK Architecture)**

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3. Standard to be Varied

The standard that is proposed to be varied is the maximum height of buildings standard under Clause 4.3 of Randwick Local Environmental Plan 2012 (RLEP).

> ***4.3 Height of buildings***
>
> *(1) The objectives of this clause are as follows—*
>
> *(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
>
> *(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
>
> *(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*
>
> *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
>
> *(2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.*



Figure 3 Height of building, site highlighted with yellow boundary (Source: NSW Planning Portal, Spatial Viewer)

As can be seen above, the site is subject to a maximum building height of 9.5 metres in accordance with the Height of Buildings Map. The development standard to be varied is not excluded from the operation of Clause 4.6 of RLEP and therefore, can be varied under that clause.

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4. Extent of Variation

As noted earlier, the standard that is proposed to be varied is the maximum height of buildings under clause 4.3 of the RLEP, which outlines a maximum height of 9.5 metres for the site.

The proposal exceeds the 9.5 metre height control (shown as the purple height plane in the figures below), with the extent of variation differing across the site due to the natural fall of the land and the stepped building form. When the uniform 9.5 metre height plane is applied, the building intersects this plane at different points, resulting in a series of measured variations, which are summarised below:

- South-eastern corner: a total height of 19.7 metres with a variation of 10.2 metres or 107%.
- South-western corner: a total height of 22.5 metres with a variation of 13 metres or 137%.
- Central portion of building: a total height of 24 metres or a variation of 14.5 metres or 153%.
- North-western corner: a total height of 22.3 metres or a variation of 12.8 metres or 135%.

The extent of height variation increases and decreases across the site based on the topography of the land, which decreases from north-west to south-east. The smallest variation along the upper portion of the building occurs at the southeastern corner, where the building reaches a total height of 19.7 metres (107% variation). As the ground level drops moving westward, the variation becomes more pronounced, with the southwestern corner rising to a total height of 22.5 metres (137% variation). The greatest exceedance occurs through the central portion of the building, where the total height peaks at 24 metres, corresponding to a 14.5 metre or 153% variation above the control. Beyond this central high point, the height reduces again towards the northwestern corner, where the building sits at 22.3 metres (135% variation).

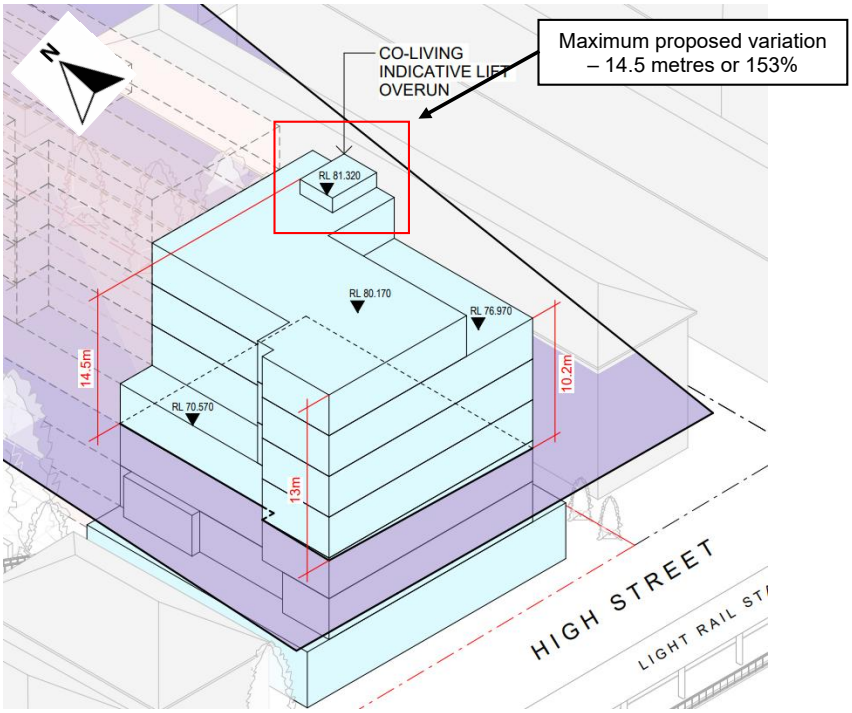


Figure 4 **9.5m height plane with respect to the co-living component, when viewed from High Street (Source: WMK Architecture)**

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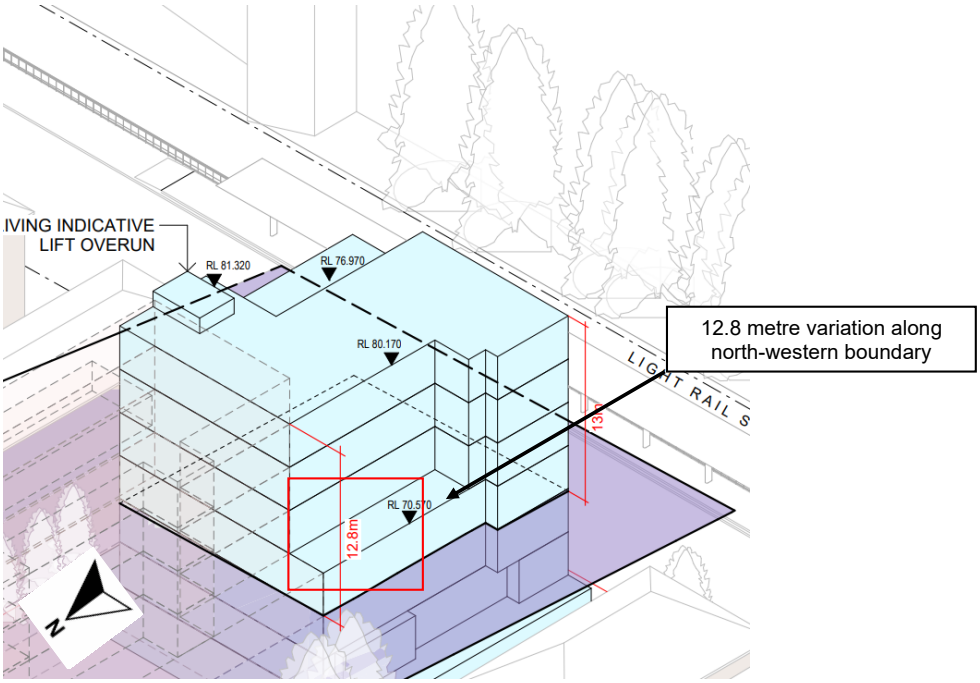


Figure 5 **Co-living height plane when viewed from Arthur Street (Source: WMK Architecture)**

There is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6: GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]. As Commissioner Clay explained in his decision in SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, that the application of Clause 4.6 should not be constrained by a perceived maximum number by which a standard may be varied (this decision was upheld by the Chief Judge of the Land and Environment Court on appeal in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115).

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5. Unreasonable or Unnecessary

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the LEP.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. *See Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe).*

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) *(Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]) and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31]).*

Nonetheless, we have considered each of the ways as follows.

5.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First Test under Wehbe).

Table 1 Response to Clause 4.3 Objectives

Objective	Demonstration
4.3 Height of buildings (1) The objectives of this clause are as follows—	
(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 proposed development are compatible with the desired future character of the locality when considered against Council's strategic vision for the High Street corridor. The Randwick Comprehensive Planning Proposal (2022) identifies High Street as a key Housing Investigation Area (HIA) intended to accommodate future housing growth in locations with strong access to public transport, major employment generators, and essential services. As part of this work, Council identified the High Street HIA as an area suitable for significant uplift, with a preferred built form in the order of 8–9 storeys, supported by updated zoning, height of building and FSR controls. This future character aligns with broader State and District planning objectives encouraging increased density in well-serviced urban locations. Although the subject site was ultimately deferred from the draft rezoning at the Extraordinary Council Meeting of 30 August 2022 following a request from UNSW for further detailed assessment, Council's broader vision for the High Street HIA

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	remains relevant. The deferral did not negate Council's strategic intent for increased density along High Street but instead paused the application of new controls to this specific block. As illustrated in the figure below, Council envisages a mid-rise character along High Street, with new development contributing to a cohesive, higher-density urban form reflective of the corridor's transport accessibility and proximity to UNSW, Randwick Hospitals, Royal Randwick Racecourse and Randwick Junction.  **Figure 6 Option 2 – Plan View – Maximum 9 Storeys (Source: Arthur Street HIA Urban Design Analysis Report)** Within this strategic context, the proposed development (specifically the co-living building) represents an appropriate built form response. Its height and massing at 7-storeys, sit well below the 8–9 storey mid-rise typology anticipated for the HIA and therefore align with the intended future character outlined in the Planning Proposal (refer to figure below). The stepping and separation of the proposed envelope ensure the built form integrates sensitively with adjoining development while still contributing to the mid-rise character envisioned for High Street. This will be further enhanced and demonstrated in subsequent detailed DAs.  **Figure 7 Wider Context based on outcomes of Randwick Comprehensive Planning Proposal** Accordingly, the proposal is considered compatible with the desired future character of the locality, as defined in Council's proposed strategic planning framework.
(b) to ensure that development is compatible with the scale and	The site is located approximately 60 metres to the east of the Randwick Racecourse Conservation Area (refer to figure below), however the proposed development does not interface directly with this area and will not impact its identified heritage values. The Draft Randwick Development Control Plan - B2 Heritage, confirms that the significance of this conservation area is derived from qualities such as narrow lot

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character of contributory buildings in a conservation area or near a heritage item,	subdivision patterns, consistent setbacks, traditional pitched and gabled roofs, brick and painted stucco materials, terracotta and slate roofing, and federation-style verandah detailing. These characteristics relate specifically to the built form and landscape features within the racecourse precinct itself. The subject site is sufficiently removed so that the proposal does not erode or influence any of these elements, with no alteration to subdivision patterns, no removal or modification of heritage fabric, and no change to the characteristic forms or detailing that contribute to the conservation area's significance. Within the racecourse grounds, several heritage items are located approximately 1km to the north-west, including the Members' Stand/Official Stand, the Tramway Turnstile Building Complex, and associated structures. These items are physically and visually separated from the site by distance, intervening built form, and the expansive racecourse grounds, ensuring that the proposal does not impact their significance. Similarly, "Blenheim House and Outbuilding," located approximately 230 metres east of the site, is separated by existing development and public road corridors, with no interface that would generate adverse heritage impacts. Importantly, the applicable DCP does not identify any contributory buildings within or adjoining the subject site. As such, there is no established heritage streetscape or local character that the development is required to replicate. Given the separation from all identified heritage items and the lack of any physical or visual connection to the significance of the nearby conservation area, the proposal is compatible with the surrounding heritage context and will not adversely affect any heritage item or conservation area.  **Figure 8 Heritage map, site highlighted with red boundary (source: NSW Planning Portal, Digital EPI Viewer)**
(c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*	**Visual Bulk** The proposed height variation for the co-living component will not result in adverse visual bulk impacts on adjoining or neighbouring properties. The 7-storey co-living building sits below the 8–9 storey mid-rise form identified in the Randwick Planning Proposal for the High Street HIA, demonstrating that the scale of the development remains consistent with the locality's likely desired future character. The concept envelope incorporates stepping, modulation and appropriate separation distances to surrounding lower-scale residential areas, which effectively reduce perceived bulk and create a suitable transition in scale (refer to Figure 9 to Figure 11). As this is a Concept DA, detailed articulation, façade treatments, materiality and other design refinements that further mitigate visual bulk will be resolved at the Detailed DA stage. <u>Visually Coherent Built Form Outcome</u> Although this Clause 4.6 Variation Request relates only to the co-living height variation, it is necessary to consider this component within the context of the overall development form established by the two residential flat buildings.

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- The co-living building presents a modest height of 7 storeys, stepping down from the proposed adjoining RFBs, which reach up to 8 storeys. This ensures a coordinated building profile across the site rather than an abrupt height transition.
- The co-living building accounts for a much smaller proportion of overall scale and massing compared to the RFB components. Its lower height and reduced footprint ensure that it reads as a subordinate and complementary element in the overall arrangement of built form across the site.
- The proposed height achieves an appropriate 4.45 metre transition between the co-living component (RL 81.320) and the adjoining residential flat building (RL 85.770). This creates a visually coherent stepping of height across the site. If the co-living component were required to comply strictly with the 9.5 metre height control, it would result in an unreasonably and visually jarring height drop, undermining the architectural composition of the broader development.
- A lower height for the co-living building would also significantly reduce its capacity and compromise the delivery of meaningful co-living housing, limiting the range of housing options for students, key workers and other occupants who benefit from the site's proximity to UNSW and the Randwick Health and Education Precinct.

In this context, the proposed height exceedance for the co-living component contributes to an overall built form that is visually coherent, contextually appropriate and reflective of the planned future character for the High Street corridor.

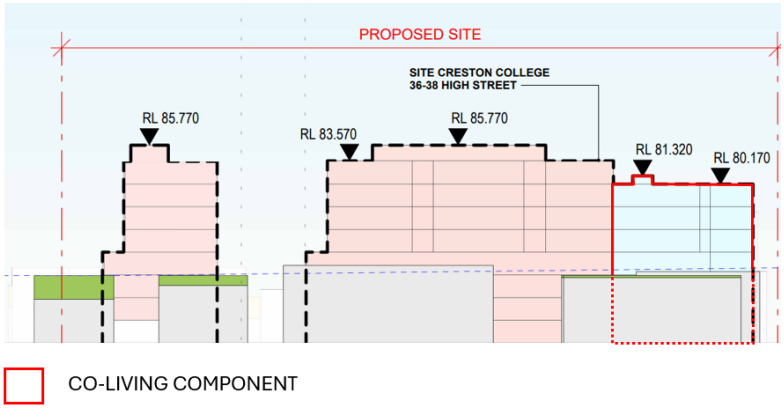


Figure 9 **Co-living component – built form transition with RFB (Source: WMK Architecture)**

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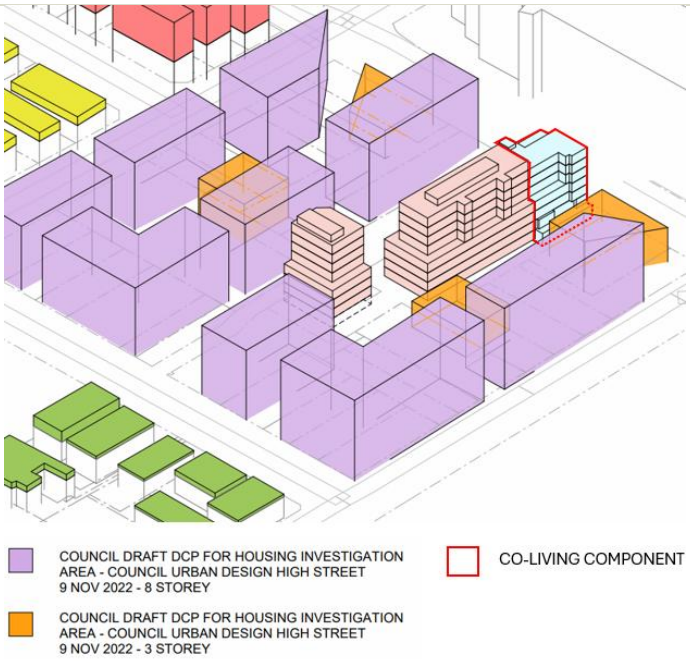


Figure 10 **Co-Living Component and Envisaged Built Form Context (Source: *WMK Architecture)***

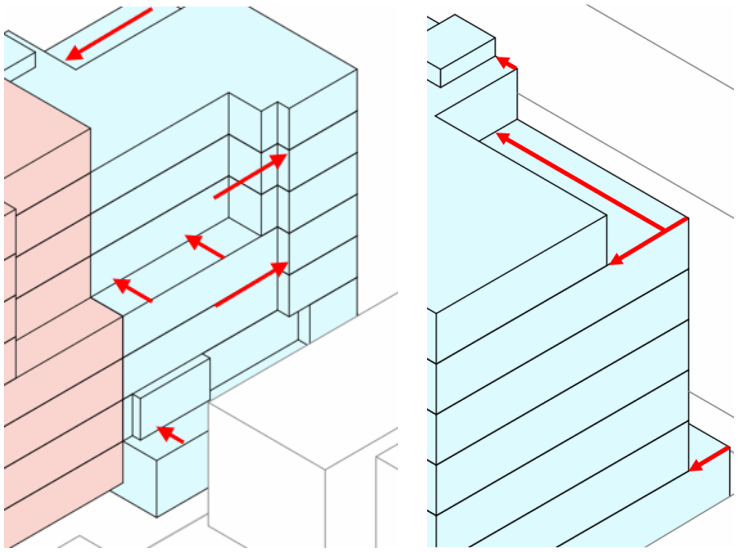


Figure 11 **Co-Living Component – Built Form Recessions (Source: *WMK Architecture (annotated by Gyde))***

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Loss of Privacy

The proposed development will not result in any unacceptable impacts on the privacy of adjoining or neighbouring properties. This application is lodged as a Concept DA, which establishes the building envelope, height and general massing only. Detailed architectural elements that relate directly to privacy, such as the location and orientation of windows, balconies and internal room layouts, do not form part of this stage and will be fully addressed in the subsequent Detailed DA.

At that stage, appropriate mitigation measures will be incorporated where required, including the use of screening, privacy louvres and high sill windows, to ensure that overlooking into adjoining properties is avoided or minimised.

Overshadowing

The shadow analysis for mid-winter demonstrates that the proposed development does not result in any unreasonable overshadowing impacts to adjoining or neighbouring properties.

At 9am (refer to figure below), the additional shadows generated from the height variation fall largely to the south-west and primarily affect the High Street road reserve, the footpath along High Street and parts of the UNSW campus, currently occupied by university buildings.

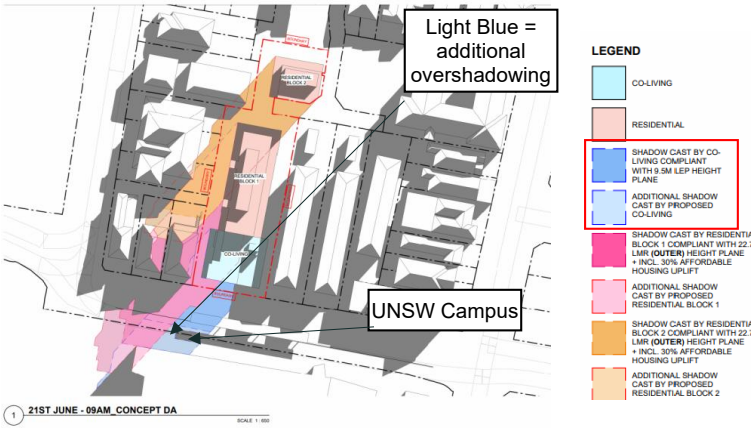


Figure 12 Shadow diagram, 9am mid-winter (Source: WMK Architecture)

At 1pm (refer to figure below), the proposal does not introduce any additional overshadowing to the adjoining residential dwellings to the west. Shadows are predominantly contained within the subject site, with the incremental shadow generated by the height variation of the co-living building falling mainly over the

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High Street road reserve and the non-residential UNSW buildings to the south.

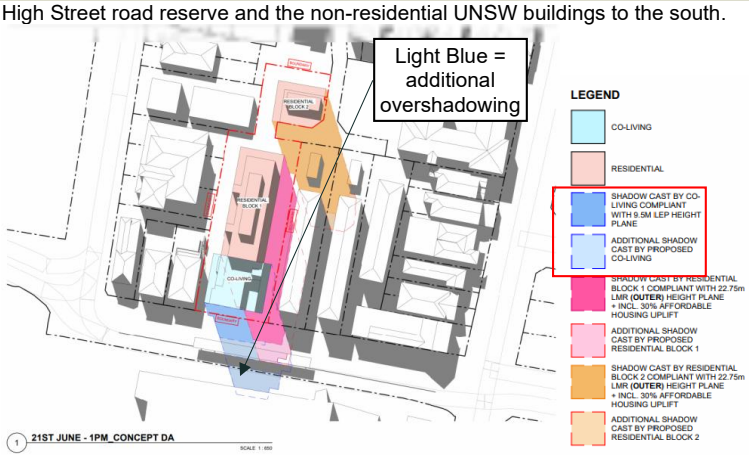


Figure 13 Shadow diagram, 1pm mid-winter (Source: WMK Architecture)

By 3pm (refer to figure below), shadows naturally shift to the southeast. While some shadowing falls within the adjacent site to the east, this results from a compliant building envelope. The additional shadow generated specifically by the height variation is limited to the UNSW campus and the High Street road reserve, with no incremental shadowing affecting adjoining residential properties.

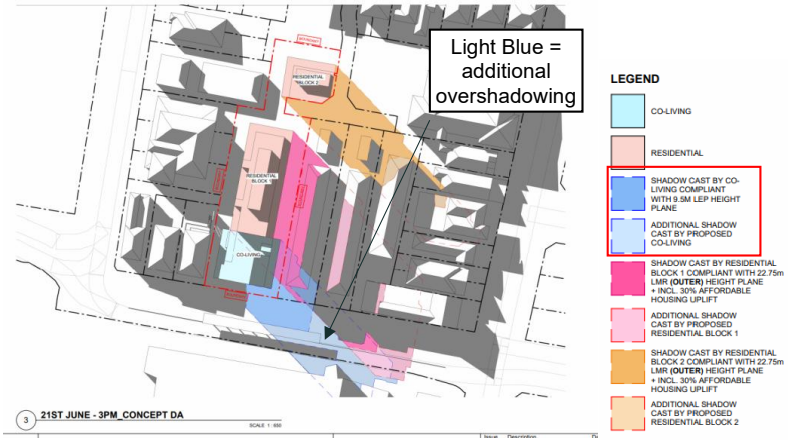


Figure 14 Shadow diagram, 3pm mid-winter (Source: WMK Architecture)

Overall, the diagrams confirm that the proposal is appropriately sited and massed to avoid adverse overshadowing impacts on adjoining residential properties. The shadow analysis demonstrates that the additional overshadowing generated by the height variation is limited in extent and falls predominantly over the High Street road reserve and UNSW campus, both of which are non-residential and do not rely on solar access for amenity. Any overshadowing of residential properties occurs only from the compliant built form.

Views

The proposal will not adversely impact the amenity of adjoining or neighbouring land in terms of views. The site currently accommodates a 2-storey building, and its

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immediate context comprises predominantly 2-storey buildings to the west and north, a 4-storey residential flat building 2 lots to the east, and 6-7 storey institutional buildings within the UNSW campus to the south along High Street. These UNSW buildings accommodate teaching and research spaces rather than residential uses and therefore do not rely on view corridors for residential amenity.

In terms of views, the only significant long-distance views potentially available in the locality are towards the east to Coogee Beach, approximately 2 km away (refer to figure below). Given the orientation of surrounding development, the proposed development will not obstruct or diminish any of these potential eastern view corridors. The topography of the area may also allow for some distant city skyline views, approximately 7 kilometres away, in the north-western direction.

While some UNSW buildings could experience partial view change, these buildings are not residential and therefore do not rely on outlook for residential amenity. The only nearby residential property that could be considered is 42 High Street, Randwick, located to the east of the subject site. However, any distant views from this location would be oriented to the northwest, and because the proposed building sits to the west of the site, it does not intrude into that potential view corridor.



Figure 15 Surrounding Views, site highlighted with star (Source: Near Map)

In terms of view impacts, it is important to note that if the outcomes of the Randwick Comprehensive Planning Proposal are realised, the High Street precinct will accommodate significantly taller mid-rise buildings (refer to figure below). This future built form will inevitably contribute to a degree of view loss across the precinct Notwithstanding this, the proposed development, due to its siting and its moderated scale relative to the 8–9 storey heights envisaged under the Planning Proposal, minimises any potential view impacts.

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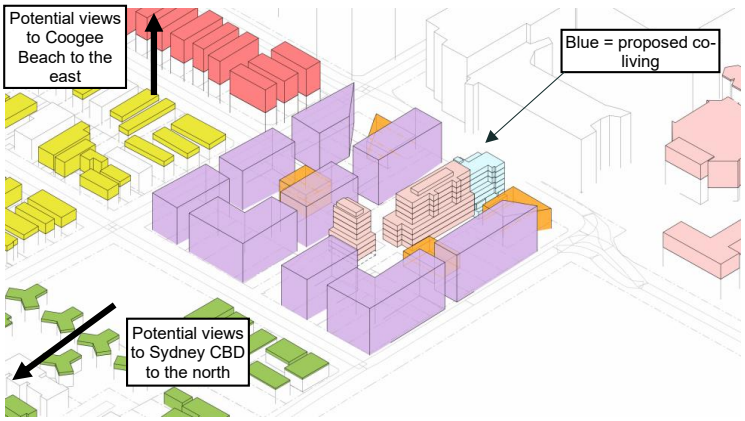


Figure 16 Wider Context based on outcomes of Randwick Comprehensive Planning Proposal

5.2 The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.

This test is not relied upon. The underlying objective or purpose is relevant to the development.

5.3 The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.

This test is not being relied upon.

5.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

This test is not being relied upon.

5.5 The zoning of the land is unreasonable or inappropriate.

This test is not relied upon. The applicable land use zone (Zone R3 – Medium Density Residential) is reasonable and appropriate to the site.

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6. Sufficient Environmental Planning Grounds

In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the height of buildings development standard are as follows:

- The proposal is compatible with the desired future character of the locality, noting that Council's Randwick Comprehensive Planning Proposal (which has been adopted and forms part of the RLEP, with the specific provisions for this site being deferred) identifies the High Street HIA corridor for mid-rise development of 8–9 storeys. Although this block was deferred from the proposal following UNSW's request for further assessment, the strategic vision remains relevant and demonstrates that increased height and density are anticipated in this area.
- The proposed height represents an appropriate outcome that sits below the 8–9 storey typology envisioned in Council's Planning Proposal and HIA chapter, ensuring a built form that is consistent with the future urban character for High Street.
- The development incorporates a stepped massing that reduces visual bulk, provides a transition to lower scale residential areas and ensures the proposal does not appear visually dominant in its immediate context. Further refinement of the building's articulation, materials, and detailed massing will occur at the Detailed DA stage, noting that this application seeks concept approval only.
- Overshadowing impacts are acceptable, with additional shadow generated by the height variation falling predominantly over the High Street road reserve and UNSW land, which do not rely on sunlight for residential amenity. At 9am and 1pm, no additional overshadowing is introduced to residential properties, and by 3pm, any shadow cast on the adjacent eastern site results from the compliant portion of the built form, not the height variation. All residential properties maintain sufficient mid-day solar access, and the proposal does not give rise to any unreasonable overshadowing impacts.
- View impacts are minimal, as the proposal does not intrude into significant view corridors to Coogee Beach (east) or potential distant city skyline views (north-west). Should the Planning Proposal outcomes be realised, taller buildings will form the High Street precinct, meaning some view change is expected, however, the siting of the proposal ensure that any incremental view impact is minimised.
- Privacy impacts can be appropriately managed, noting that this is a Concept DA. Detailed window placement, balcony orientation, screening and landscaping measures will be addressed at the detailed DA stage to ensure no unreasonable overlooking.
- The development does not adversely affect any heritage items or conservation areas, with substantial separation distances to Blenheim House and the Randwick Racecourse Conservation Area. The proposal does not interfere with the significance, setting or views to or from these heritage items.
- The proposal responds to the established and emerging built form of the precinct, aligning with Council's long-term vision for increased density and improved housing diversity along High Street while still maintaining an appropriate interface with surrounding properties.

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

- Object (b) Facilitating ecologically sustainable development by supporting a transit-oriented built form in an accessible location within walking distance of bus services and directly opposite the UNSW High Street light rail stop. This reduces reliance on private vehicles and allows for the future integration of

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sustainability measures (via the preparation of the detailed DA) such as energy-efficient design, rooftop solar, water-sensitive landscaping and high-quality communal open space.

- Object (c) Promoting the orderly and economic use and development of land by enabling higher-density housing on a strategically located and well-serviced site that benefits from immediate access to public transport, employment/retail precincts and educational institutions. The development is consistent with the mid-rise future character envisaged for the High Street precinct and supports efficient urban land use.
- Object (d) Promoting the delivery and maintenance of affordable housing, noting that while affordable housing is not proposed within this component of the development, it forms part of the broader RFB component. This component includes a co-living housing, which delivers a more attainable form of long term rental accommodation. Co-living housing provides self-contained private rooms complemented by shared communal facilities and onsite management, supporting lower overall living costs while expanding housing choice for key workers, students and lower income households. The location, in close proximity to UNSW and the Randwick Health and Education Precinct, further reinforces the relevance and public benefit of this housing typology.
- Object (e) Protecting the environment, noting that the site does not comprise any known threatened species, ecological communities or habitat areas. The proposal also enables deep soil planting that support local biodiversity and improve environmental performance.
- Object (f) Promoting the sustainable management of built and cultural heritage as the proposal is sufficiently separated from Blenheim House and the Randwick Racecourse Conservation Area, ensuring no adverse impacts on their significance, setting or curtilage.
- Object (g) Promoting good design and amenity of the built environment through a concept that establishes appropriate stepping, improves the streetscape presence along High Street, and provides opportunities for high-quality architectural refinement at the detailed DA stage to ensure appropriate amenity, privacy, solar access and design quality.

For completeness, we note that the size of the variation is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]*.

In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for variations to be approved in the right circumstances.

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7. Conclusion

This Clause 4.6 Variation Request has demonstrated that:

- Compliance with the maximum permitted height control (9.5 metres) that applies to the co-living component under Clause 4.3 of the RLEP would be unreasonable and unnecessary in the context of this Concept DA. The following is noted in this regard:
  - The proposal is consistent with the objectives of Clause 4.3 in the RLEP, notwithstanding the variation.
- There are sufficient environmental planning grounds to justify the proposed variation with respect to:
  - The envisaged land use intensity of development at the site, which is consistent with the concept envelope for the co-living component and Council's strategic planning intentions for the local area.
  - The efficient and appropriate distribution of built form volumes within the site, including in relation to the north-adjoining (proposed) envelope for the RFB component.
  - The acceptable level of solar amenity that will continue to be afforded to surrounding residential properties by a fast-moving shadow footprint that is reasonable to anticipate with respect to:
    - The envisaged scale and density of development at the site.
    - The orientation of the site and configuration of adjoining allotments.
    - State-led policy reforms that prioritise the delivery of housing, including affordable housing, at locations that are within walking distance of rapid transit.
  - The character of the local area, including historic values that are associated with the Randwick Racecourse Conservation Area and Blenheim House.
  - The objects of the EP&A Act.

On the above basis, it is appropriate for Council, as the consent authority, to exercise the flexibility conferred by Clause 4.6 of the RLEP to support the proposed variation.

DEVELOPMENT APPLICATION
36/2026
Randwick City Council
21 January 2026
Records Received

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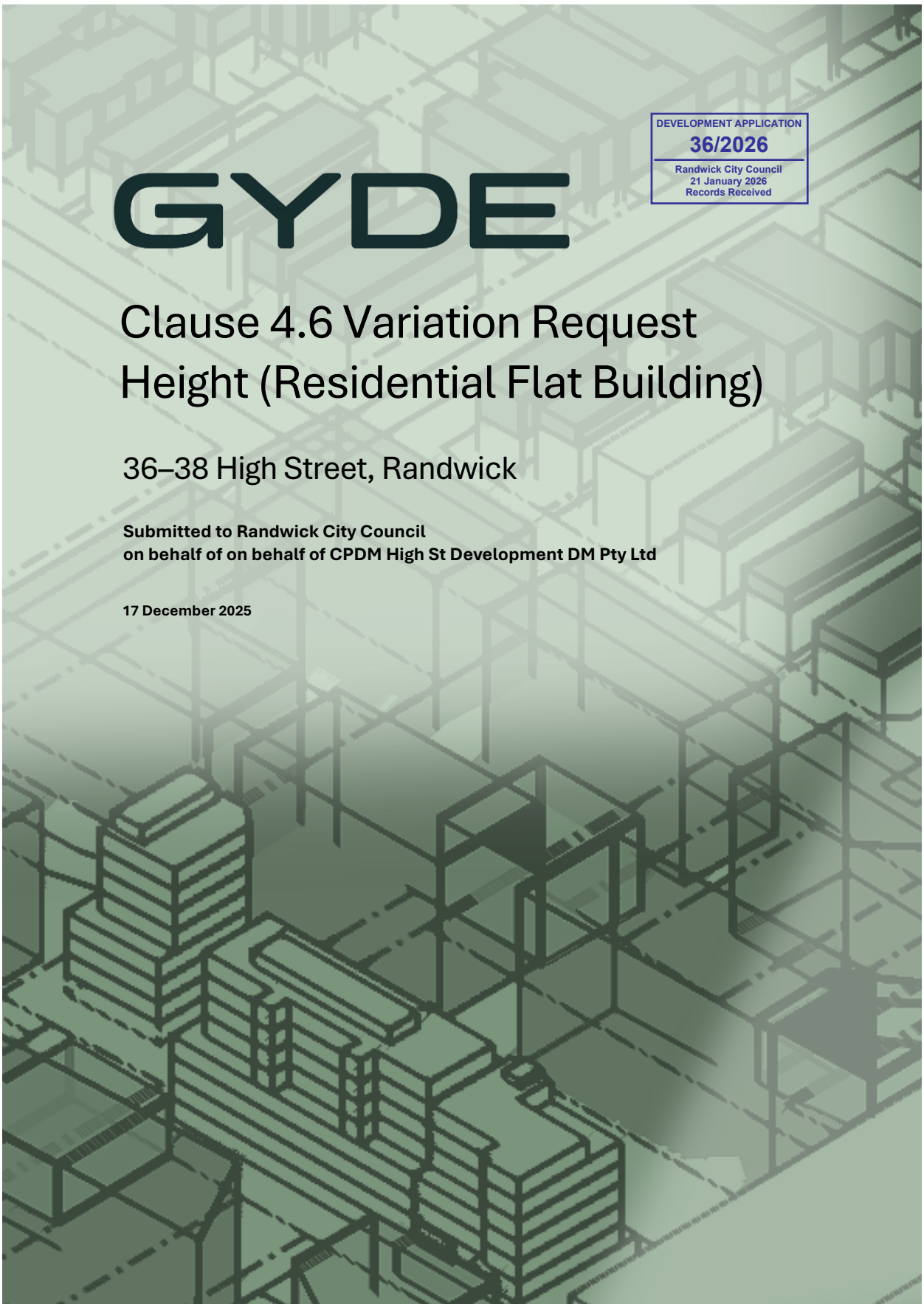
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Clause 4.6 Variation Request Height (Residential Flat Building)

36–38 High Street, Randwick

Submitted to Randwick City Council
on behalf of on behalf of CPDM High St Development DM Pty Ltd

17 December 2025



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Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

This report was prepared by:

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Project:	Height of Buildings (Residential Flat Buildings)
Report Version:	Final

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Disclaimer

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1. Introduction

This is a formal request that has been prepared in accordance with Clause 4.6 of the *Randwick Local Environmental Plan 2012* (RLEP) to justify a variation to Section 16(3) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) which provides building height for developments that incorporate affordable housing. The Development Application is submitted to Randwick City Council seeking consent for a mixed-use concept development, comprising a 7-storey co-living housing component and 2 x 8-storey Residential Flat Building (RFB) components, at 36-38 High Street, Randwick (hereon referred to as the Concept DA). It is important to note, that this Clause 4.6 variation relates only to the RFB component of the development. A separate Clause 4.6 variation request has been prepared for the co-living component of the development given it is subject to a different height standard.

The DA is made subject to the provisions of Chapter 2 Affordable Housing and Chapter 6 Low and Mid Rise Housing of the Housing SEPP. Chapter 6 of the Housing SEPP provides the development standards that allow for higher density development in key locations that are located within walking distance of specified town centres or public entrances to railway, metro or light rail stations. Therefore, whilst the RLEP is the primary environmental planning instrument (EPI) applying to the site, the proposed development is made pursuant to the provisions of the Housing SEPP which prevail to the extent of an inconsistency with the RLEP. In addition, the in-fill affordable housing provisions permit up to 30% additional building height for development that incorporates the minimum required floor space for affordable housing.

Clause 4.3 of the RLEP requires that the height of buildings for the site does not exceed 9.5m when measured from existing ground level. As noted above, the proposal seeks consent for a development that relies on the provisions in Chapter 6 of the Housing SEPP, which permit greater density than envisaged under the RLEP. The provisions in Chapter 6 (Section 16(3)) allow for a building height of up to 17.5 metres. With an additional 30% building height and FSR permitted under Chapter 2 of the Housing SEPP, the maximum permissible building height 22.75 metres. This Concept DA seeks consent for a residential flat building up to 27.75 in height at its maximum. Therefore, the proposal (residential flat component) exceeds the maximum permissible building height by 5 metres or 22% when measured from existing ground level. The departure from the standard is set out further in Section 3 (Extent of variation) of this request.

This request should be read in conjunction with the documents prepared in support of the DA lodged for the site, including the Statement of Environmental Effects (SEE) prepared by Gyde and the accompanying architectural drawings prepared by Giles Tribe.

This request has been prepared having regard to the NSW Department of Planning and Environment's Guidelines to Varying Development Standards (November 2023) and various recent decision in the New South Wales (NSW) Land and Environmental Court (LEC) and the NSW Court of Appeal (Appeals Court).

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying a certain development standard to development, in particular circumstances, and to achieve better outcomes for and from development.

For this reason, there is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85]. As Commissioner Clay explained in his decision in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, that the application of Clause 4.6 should not be constrained by a perceived maximum number by which a standard may be varied (this decision was upheld by the Chief Judge of the Land and Environment Court on appeal in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115).

In very brief terms, the requirement to comply with the development standard is unreasonable and unnecessary in the circumstances because:

- The proposed variation enables the orderly and economic use and development of land through the redevelopment of an underutilised site for much needed housing, including affordable housing.

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- The proposal will maximise the number of residential dwellings on the site in response to the current housing crisis with little to no unacceptable, or adverse environmental impacts. Specifically, the areas above the height plane do not cause adverse amenity impacts.
- The proposal will expand the current residential land use by providing approximately 6,500 sqm of residential gross floor area (with 15% provided as affordable housing) in a highly accessible location directly opposite the UNSW High Street Light Rail Station, consistent with Council's Planning Proposal vision for increased residential density and a mid-rise character along the High Street corridor.
- The proposal will continue to achieve the objectives of Clause 4.3, including ensuring that the height and scale of development are compatible with the desired future character of the locality, that visual bulk is appropriately minimised, that overshadowing and view impacts on neighbouring properties remain acceptable and that the development contributes to a high-quality built form outcome.

This Clause 4.6 Variation Request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the contravention.

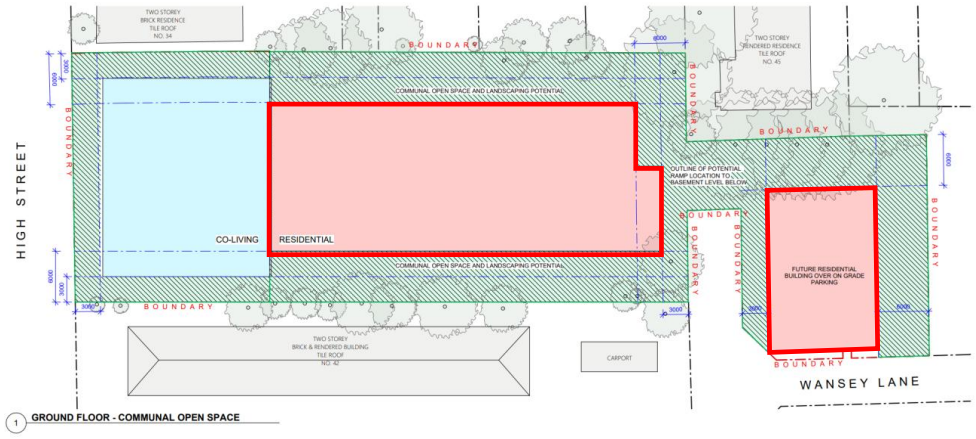
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2. Proposed Development

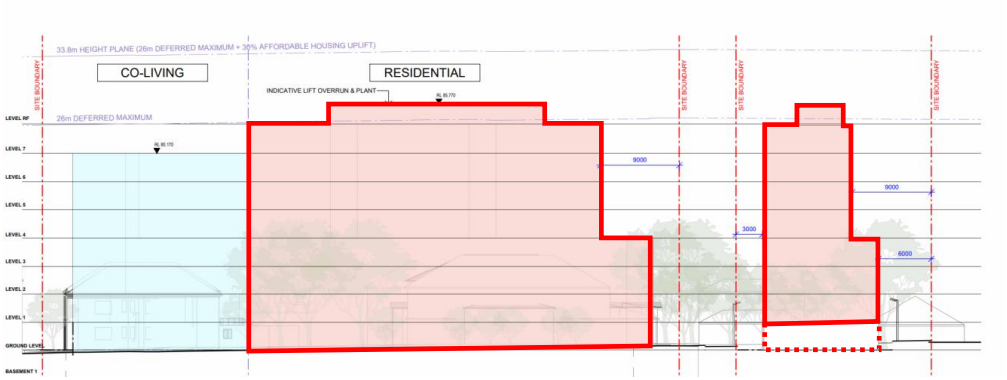
The proposal is for a mixed-use concept development, comprising a 7-storey co-living housing component and 2 x 8-storey RFB components, across 2 buildings, together with rooftop plant to a maximum height of RL 85.770. The concept identifies basement parking, communal open space and associated landscaping and civil works.

This Clause 4.6 variation relates only to the infill affordable housing/RFB component of the development. The figures below illustrate the building envelopes that are the subject of the variation request.



Residential Flat Building Component
Subject of this Clause 4.6 Variation Request.

Figure 1 **Proposed ground level, RFB highlighted with red outline (Source: WMK Architecture)**



Residential Flat Building Component
Subject of this Clause 4.6 Variation Request.

Figure 2 **Proposed massing envelopes, RFB highlighted with red outline (Source: WMK Architecture)**

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3. Standard to be Varied

The environmental planning instrument (EPI) to be varied is the Housing SEPP.

In April 2024, the NSW Government announced the introduction of Chapter 6 of the Housing SEPP, which commenced on 28 February 2025. Section 180 in Chapter 6 of the Housing SEPP establishes a *maximum permissible building height* of 17.5 metres and FSR of 1.5:1 for the subject site, which is located within the *low and mid rise housing outer area*, as follows:

(1) *This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.*

(2) *The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area—*

(a) a maximum floor space ratio of 2.2:1,

(b) for residential flat buildings—a maximum building height of 22m,

(c) for a building containing shop top housing—a maximum building height of 24m.

(3) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing outer area—

(a) a maximum floor space ratio of 1.5:1

(b) a maximum building height of 17.5m.

The proposed development seeks to also utilise the in-fill affordable housing provisions in Chapter 2, Part 2, Division 1 of the Housing SEPP which provide opportunity for up to 30% additional building height and FSR for developments that incorporate at least 10% affordable housing. Section 16 in Chapter 2 of the Housing SEPP provides the following:

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

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

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

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

(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.

In accordance with Section 16(3) the maximum height for a building that is a RFB is the *maximum permissible building height* for the development on the land plus an additional building height of up to 30%. Therefore, an additional 30% on top of the maximum permissible building height of 17.5 metres results in an overall *maximum permissible building height* of 22.75 metres. The proposal seeks consent for a building with a height of up to 27.75m measured from existing ground level, resulting in an exceedance of up to 5 metres or 22% of the development standard. Therefore, the standard that is proposed to be varied is the maximum height of building standard under Section 16(3) of the Housing SEPP.

The development standard to be varied is not excluded from the operation of Clause 4.6 of the RLEP and therefore, can be varied under Clause 4.6.

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4. Extent of Variation

As noted earlier, the standard that is proposed to be varied is the maximum height of buildings standard under the Housing SEPP, which prescribes a maximum height of 22.75 metres.

The proposal exceeds the applicable height control, shown as the purple height plane overleaf, with the extent of variation differing across the site due to both the natural fall of the land and the stepped built form. When the uniform height plane is applied, the building intersects this control at several points, resulting in a series of measurable exceedances. These are illustrated in the diagrams and summarised as follows:

- South-western portion: an exceedance of 2.8 metres, resulting in a total height of 25.55 metres, equating to a 12% variation.
- Central portion of the site: the maximum variation occurs in the mid-block area, where the built form rises 5 metres above the height plane, resulting in a total height of 27.75 metres, a 22% variation, representing the largest departure across the site.
- North-western portion (transition to Botany Street): an exceedance of 2.8 metres, generating a total height of 25.55 metres, a 12% variation.

The extent of height variation increases and decreases across the site in response to the topography, which slopes downward from north-west to south-east, and due to the architectural strategy of stepping the built form to mediate between High Street and the adjoining properties. The smallest variations occur along the southern edge (High Street), where the lower portions of the building closely track the height plane. As the ground level drops and the massing steps up towards the west and central portion of the site, the height departures become more pronounced, peaking at approximately 5 metres in the central area. The exceedance then tapers again as the building transitions towards the northern interface with Botany Street.

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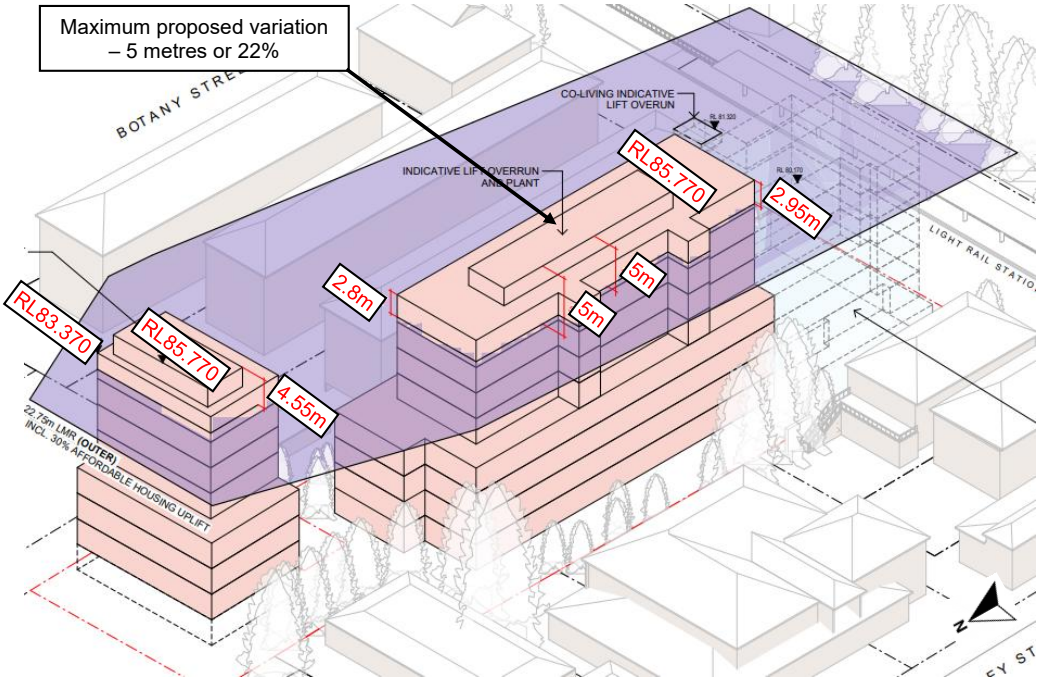


Figure 3 **RFB height plane when viewed from the north (Source: WMK Architecture)**

There is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6: GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]. As Commissioner Clay explained in his decision in SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, that the application of Clause 4.6 should not be constrained by a perceived maximum number by which a standard may be varied (this decision was upheld by the Chief Judge of the Land and Environment Court on appeal in Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115).

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5. Unreasonable or Unnecessary

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the LEP.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. *See Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe).*

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) *(Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]) and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31]).*

Nonetheless, we have considered each of the ways as follows.

5.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the proposal satisfies the objectives of Clause 4.3 Height of Buildings under the RLEP, as well as the principles in Section 3 of the Housing SEPP, noting that the applicable development standard sits within the Housing SEPP and that the SEPP does not contain specific objectives for the height standard. This assessment is provided to address the First Test under Wehbe.

Table 1: Consistency with Principles of Housing SEPP

Principle	Demonstration
(a) enabling the development of diverse housing types, including purpose-built rental housing,	The RFB component is essential to achieving an outcome that gives practical and substantive effect to Principle (a) of the Housing SEPP on a basis that is two-fold: **1. When considered independently, the RFB component will facilitate the delivery of diverse, affordable housing.** 15% of the GFA for the RFB component will enable the delivery of affordable *"purpose built rental housing"* for a minimum period of 15 years. The concept built form envelope for the RFB component is expressly capable of accommodating a diverse range of affordable rental apartments. The concept envelope readily enables a diverse mix of market-rate apartments capable of responding to identified demographic drivers and demand trends. While the final unit mix will be appropriately determined at detailed design stage, the concept envelope for the RFB component can accommodate a wide range of apartment typologies suited to singles, couples, families and downsizers.

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	When the RFB component is considered in isolation, it directly advances Principle (a) of the Housing SEPP, which seeks to enable the *"development of diverse housing types, including purpose-built rental housing"*. **2. The RFB component is fundamental to the achievement of an integrated residential land use outcome across the broader site. Compliance with the standard to be varied would undermine this outcome.** While this Clause 4.6 Variation Request has a statutory relationship solely with the RFB component, it is noted that this land use component forms part of a broader integrated residential scheme that includes co-living housing. The overall concept scheme, inclusive of the RFB component and co-living housing component, will support an outcome that exemplifies housing diversity for infill development in Randwick. The RFB component is essential to the delivery of a complementary mix of affordable apartments, market-rate apartments and co-living accommodation. Overall, the proposal will exemplify the achievement of a diverse and integrated residential land use outcome in the context of well-located infill development. Artificially constraining the delivery of residential apartments would directly undermine this outcome and frustrate the strategic intent of the Housing SEPP. Importantly, strict compliance with the applicable height standard would materially constrain the delivery of residential apartments, including affordable housing. This report has demonstrated that the proposed variation will not give rise to any unacceptable environmental impacts. Compliance would therefore result in a deficient planning outcome with respect to housing diversity, local affordability challenges, and Principle (a) of the Housing SEPP.
(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,	15% of the GFA for the RFB component will enable the delivery of affordable rental housing for a minimum period of 15 years. The concept built form envelope for the RFB component is expressly capable of accommodating a diverse range of affordable rental apartments that respond to: **1. The needs of more vulnerable members of the community, which can be appropriately provided for within the concept built form envelope for the RFB component.** As noted above in relation to Principle (a), the concept built form envelope for the RFB component is expressly capable of accommodating a diverse range of affordable rental apartments that are tailored to the needs of different demographic cohorts. In this regard, it is noted that the final unit mix will be appropriately determined at detailed design stage and does not warrant further consideration at this stage. Specifically, the concept built form envelope for the RFB component is not restrictively narrow or unsuitably dimensioned. **2. The need for housing options that can accommodate very low-, low- and moderate-income households, which would be undermined if compliance with the standard to be varied was unduly enforced.** The provision of affordable apartments within the envelopes for the RFB component responds directly to the intent of Principle (b). In this regard, it is noted that the proposed height maximises the incentivised provision rate of the Housing SEPP. If compliance with the standard to be varied was rigidly enforced, this would: - Cause an unnecessary reduction in building mass, as it has been demonstrated that the proposed variation will not result in any unacceptable environmental impacts.

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	- Result in a proportionate reduction to the amount of floorspace that is nominated for affordable rental housing within statutory parameters of the Housing SEPP that have already been maximised. The RFB component, which includes a generous offering of affordable housing, leverages the environmental context for the site and gives practical effect to Principle (b) of the Housing SEPP.
(c) ensuring new housing development provides residents with a reasonable level of amenity,	Principle (c) fixates on the need for a *"reasonable level of amenity"*, which can be provided for within the concept built form envelope for the RFB component. The following is noted in this regard: **1. Building Separation Distances:** Approval is sought for building envelopes, and this warrants early consideration of building separation distances with regard to the *NSW Apartment Design Guide* (ADG). As outlined within the Statement of Environmental Effects, the RFB component (both buildings) adopts separation distances that are consistent with the intended effect of the ADG. These separation distances will ultimately support an outcome for the site that minimises the visual prevalence of development and affords an appropriate level of privacy to adjoining properties. **2. Overshadowing:** As outlined within Table 2 of this report, the concept built form envelope for the RFB component will not contribute towards any unacceptable overshadowing due to: - The location of the site in relation to adjoining road reservations and the UNSW campus to the south. - The current extent of shadow footprints that are cast by existing development at the site and surrounding development. - The orientation of the site, which enables a fast-moving shadow footprint and a reasonably clear distinction between shadowing that is cast from the proposal during hours of the morning (predominantly to the west / south-west) and afternoon (predominantly to the east / south-east). Surrounding residential properties will retain adequate solar access during the middle part of the day, with the balance of additional shadow falling on public domain or institutional land that does not rely on sunlight for residential amenity. While some shadowing is unavoidable, the casted footprint is fast-moving and temporary. Fine-grain design consideration of other residential amenity matters will be a focal point when detailed design approval is sought to redevelop the site. This approach, which is consistent with standard industry practice where concept design approval(s) are first sought, will address the need for any fine-grain adjustments at an appropriate stage of the project lifecycle.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	The site is strategically located within the High Street corridor, which benefits from established and planned infrastructure, including frequent public transport services, proximity to UNSW, the Randwick Health and Education Precinct, Royal Randwick Racecourse, and the Randwick Junction town centre. The proposal, including the RFB component, reinforces the Housing SEPP objective of delivering higher-density rental housing within well-serviced urban locations where future residents can make efficient use of existing and planned infrastructure, reducing car reliance and supporting sustainable transport outcomes. The accommodation of affordable rental apartments within the site will contribute towards housing equity with respect to accommodation options that are close to public transport, services and amenities where lower-income households could otherwise be 'priced out'.

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(e) *minimising adverse climate and environmental impacts of new housing development,*	The accompanying SEE demonstrates that the proposed development will not result in any unacceptable adverse environmental impacts and is capable of achieving compliance with relevant environmental performance standards at the Detailed DA stage. The Concept DA envelope is capable of accommodating a wide range of sustainable design initiatives, including renewable energy generation (solar PV), water-sensitive urban design, high-performance building fabric, and energy-efficient services. This matter will be given appropriate consideration when detailed design approval is sought.
(f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*	The scale and density of the proposed RFB component aligns with the planned evolution of the High Street corridor as a mid-rise residential precinct supported by Council's strategic planning framework and State housing delivery objectives. Further reference should be made to extended discussion that has been provided in relation to this matter within Table 2.
(g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*	The RFB component of this Concept DA does not preclude short-term rental accommodation where otherwise permissible under the relevant planning controls. The proposed RFB component does not undermine the Housing SEPP objective of supporting short-term rental accommodation as a complementary housing activity where this can be appropriately managed.
(h) *mitigating the loss of existing affordable rental housing.*	The proposal will not result in the loss of any existing dwellings that meet the definition of 'affordable housing' under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Further, by supporting the introduction of a new supply affordable rental housing, the development contributes positively to rental housing stock within the locality and actively mitigates housing affordability pressures, consistent with the intent of the Housing SEPP.

Table 2 Response to Clause 4.3 Objectives

Objective	Demonstration
4.3 Height of buildings **(1) The objectives of this clause are as follows—**	
(a) *to ensure that the size and scale of development is compatible with the desired future*	The size and scale of the proposed development are compatible with the desired future character of the locality when considered against Council's strategic vision for the High Street corridor. The Randwick Comprehensive Planning Proposal (2022) identifies High Street as a key Housing Investigation Area (HIA) intended to accommodate future housing growth in locations with strong access to public transport, major employment generators, and essential services. As part of this work, Council identified the High Street HIA as an area suitable for significant uplift,

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character of the locality,	with a preferred built form in the order of 8–9 storeys, supported by updated zoning, height of building and FSR controls. This future character aligns with broader State and District planning objectives encouraging increased density in well-serviced urban locations. Although the subject site was ultimately deferred from the draft rezoning at the Extraordinary Council Meeting of 30 August 2022 following a request from UNSW for further detailed assessment, Council's broader vision for the High Street HIA remains relevant. The deferral did not negate Council's strategic intent for increased density along High Street but instead paused the application of new controls to this specific block. As illustrated in the figure below, Council envisages a mid-rise character along High Street, with new development contributing to a cohesive, higher-density urban form reflective of the corridor's transport accessibility and proximity to UNSW, Randwick Hospitals, Royal Randwick Racecourse and Randwick Junction.  **Figure 4** **Option 2 – Plan View – Maximum 9 Storeys (Source: Arthur Street HIA Urban Design Analysis Report)** Within this strategic context, the proposed development (specifically the RFBs) represents an appropriate built form response. Its height and massing at 8-storeys, sits below the 8–9 storey mid-rise typology anticipated for the HIA and therefore aligns with the intended future character outlined in the Planning Proposal (refer to figure below). The stepping and separation of the proposed envelopes will ensure the built form (i.e. through detailed design) integrates sensitively with adjoining development while still contributing to the mid-rise character envisioned for High Street.  **Figure 5** **Wider Context based on outcomes of Randwick Comprehensive Planning Proposal**

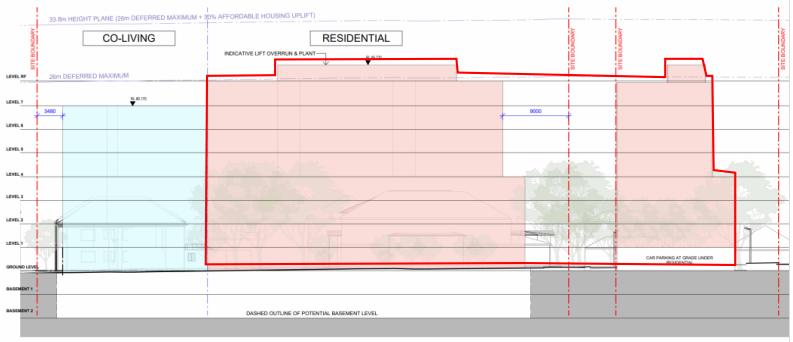
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	Accordingly, the proposal is considered compatible with the desired future character of the locality, as defined in Council's proposed strategic planning framework.
(b) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*	The site is located approximately 60 metres to the east of the Randwick Racecourse Conservation Area (refer to figure below), however the proposed development does not interface directly with this area and will not impact its identified heritage values. The Draft Randwick Development Control Plan - B2 Heritage, confirms that the significance of this conservation area is derived from qualities such as narrow lot subdivision patterns, consistent setbacks, traditional pitched and gabled roofs, brick and painted stucco materials, terracotta and slate roofing, and federation-style verandah detailing. These characteristics relate specifically to the built form and landscape features within the racecourse precinct itself. The subject site is sufficiently removed so that the proposal does not erode or influence any of these elements, with no alteration to subdivision patterns, no removal or modification of heritage fabric, and no change to the characteristic forms or detailing that contribute to the conservation area's significance. Within the racecourse grounds, several heritage items are located approximately 1km to the north-west, including the Members' Stand/Official Stand, the Tramway Turnstile Building Complex, and associated structures. These items are physically and visually separated from the site by distance, intervening built form, and the expansive racecourse grounds, ensuring that the proposal does not impact their significance. Similarly, "Blenheim House and Outbuilding," located approximately 230 metres east of the site, is separated by existing development and public road corridors, with no interface that would generate adverse heritage impacts. Importantly, the applicable DCP does not identify any contributory buildings within or adjoining the subject site. As such, there is no established heritage streetscape or local character that the development is required to replicate. Given the separation from all identified heritage items and the lack of any physical or visual connection to the significance of the nearby conservation area, the proposal is compatible with the surrounding heritage context and will not adversely affect any heritage item or conservation area.  **Figure 6** **Heritage map, site highlighted with red boundary (source: NSW Planning Portal, Digital EPI Viewer)**
(c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land*	**Visual Bulk** The proposed height variation for the RFBs will not result in adverse visual bulk impacts on adjoining or neighbouring properties. The RFBs reach up to 8 storeys, which is consistent with, and does not maximise, the 8–9 storey mid-rise form identified in the Randwick Planning Proposal for the High Street HIA. This demonstrates that the overall scale of the RFBs aligns with the desired future character for the locality and reflects Council's intended evolution of the corridor.

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in terms of visual bulk, loss of privacy, overshadowing and views.	The concept massing envelope incorporates stepping, modulation and appropriate separation distances to lower-scale residential interfaces, effectively reducing perceived bulk and facilitating a smooth transition in scale across the site (refer to Figure 7 to Figure 9). As this is a Concept DA, further refinements, including façade articulation, materials, fenestration and architectural detailing, will be addressed at the Detailed DA stage to ensure a high-quality built form outcome that continues to mitigate visual mass. <u>Visually Coherent Built Form Outcome</u> • Although this Clause 4.6 Variation Request relates only to the height of the RFB component, evaluating the built form within the context of the overall composition of the site is essential. The RFBs establish the primary mid-rise massing, while the co-living component steps down to provide an integrated and coherent built-form arrangement. • The RFBs are the dominant built-form element on the site and appropriately define the emerging mid-rise character of High Street identified in Council's Planning Proposal. • The relationship between the RFBs and the adjoining co-living component achieves a visually balanced stepping of height across the site, with a transition of 4.45m between the two envelopes. • Requiring strict compliance with the numerical height control would result in a visually conflicting height drop, disrupting the intended mid-rise profile and producing a built form inconsistent with the strategic character sought by the Planning Proposal. • The proposed height variation allows for an orderly and cohesive massing arrangement, enabling the RFB to accommodate its intended residential yield, including affordable housing, compromising streetscape quality, solar access or the amenity of adjoining properties. In this context, the height exceedance for the RFBs contributes to an overall built form that is visually coherent, contextually appropriate and aligned with the planned mid-rise future character for the High Street corridor.  **Figure 7 RFB Component – built form transition with co-living building (Source: WMK Architecture)**

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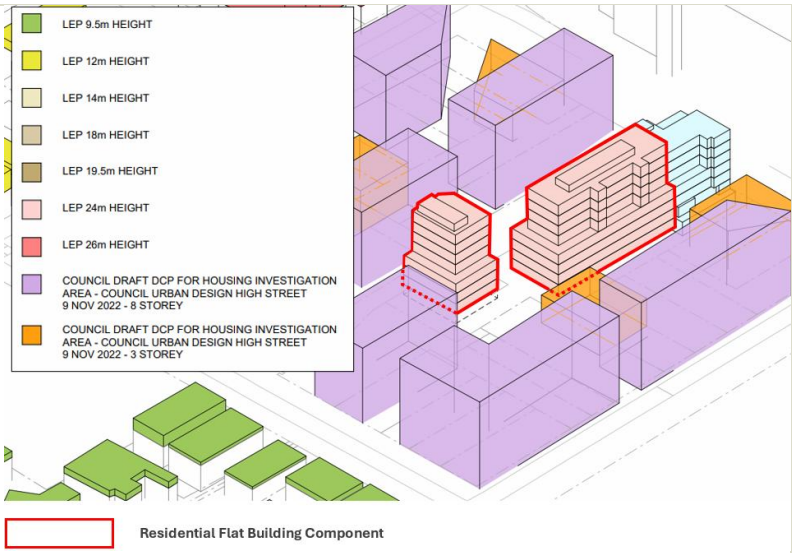


Figure 8 **RFB Component and Envisaged Built Form Context (Source: *WMK Architecture)***

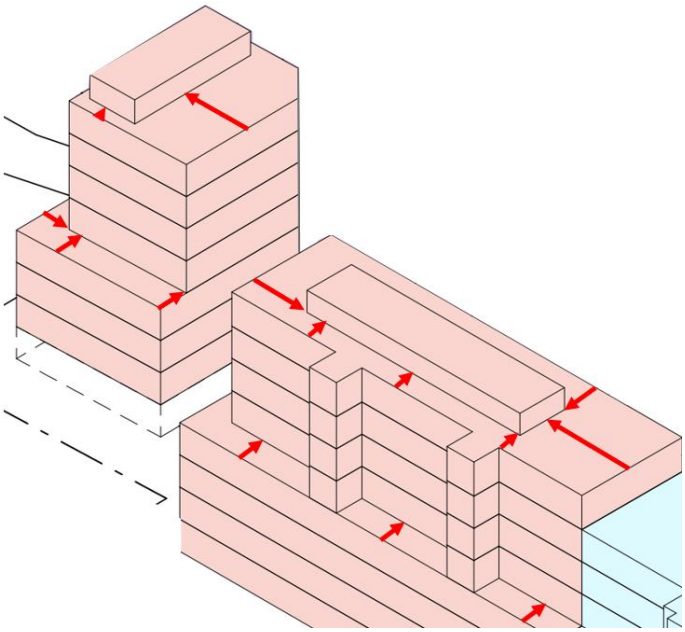


Figure 9 **RFB Component – Built Form Recessions (Source: WMK Architecture (annotated by Gyde))**

Loss of Privacy

The proposed development will not result in any unacceptable impacts on the privacy of adjoining or neighbouring properties. This application is lodged as a

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Concept Development Application, which establishes the building envelope, height and general massing only. Detailed architectural elements that relate directly to privacy, such as the location and orientation of windows, balconies and internal room layouts, do not form part of this stage and will be fully addressed in the subsequent Detailed DA.

At that stage, appropriate mitigation measures will be incorporated where required, including the use of screening, privacy louvres and high sill windows, to ensure that overlooking into adjoining properties is avoided or minimised.

Overshadowing

The mid-winter shadow analysis demonstrates that the proposal will not create unreasonable overshadowing impacts. At 9am (refer to figure below), shadowing falls predominantly to the south-west. The additional overshadowing generated by the proposal is limited to the roof of 32–34 High Street and a portion of the rear yard of 32 High Street, noting that the majority of these areas are already affected by existing overshadowing from surrounding development. The balance of the additional shadow falls across the UNSW campus, affecting non-residential buildings that do not rely on solar access for amenity.

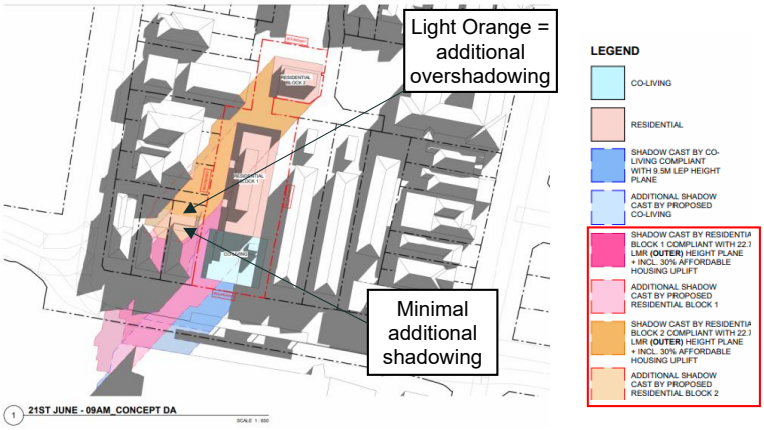


Figure 10 Shadow diagram, 9am mid-winter (Source: WMK Architecture)

At 1pm (refer to figure below), shadows fall to the east from both buildings and to the south from the rear RFB building, reflecting the layout and shape of the site. Additional shadowing from the height variation is limited to the UNSW campus, with the majority of shadow occurring as self-shadowing within the subject site, or over the road corridor and non-residential university buildings. The rear RFB building generates some additional overshadowing to 42–44 High Street, however, this is confined to the side setback areas and roof, with any shadowing of rear yards or windows attributable to the compliant building envelope rather than the height variation.

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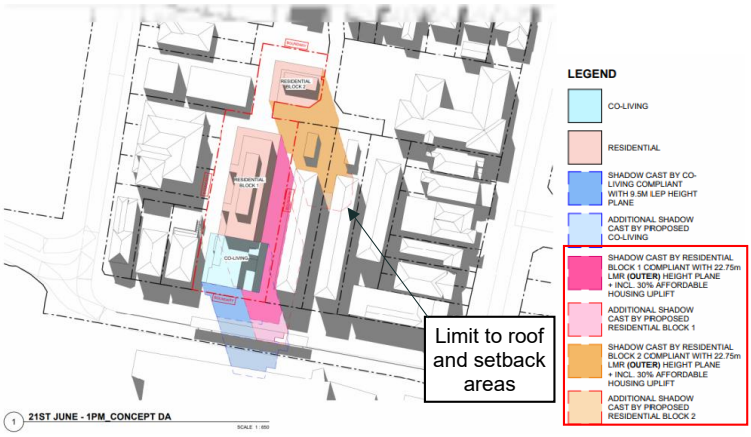


Figure 11 Shadow diagram, 1pm mid-winter (Source: WMK Architecture)

At 3pm (refer to figure below), the extent of overshadowing is consistent with what would reasonably be expected having regard to the envisaged mid-rise built form and the bonus provisions for LMR and infill affordable housing under the Housing SEPP. Height compliant envelopes of the RFBs, along with existing surrounding development, already generate substantial shadowing to the east at this time of day. The additional overshadowing associated with the height variation is limited to the roof areas of existing buildings, the High Street road reserve, and a small sliver of the UNSW campus.

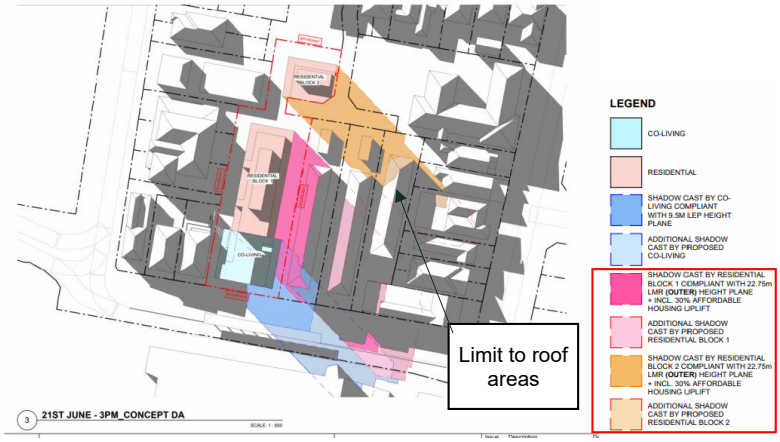


Figure 12 Shadow diagram, 3pm mid-winter (Source: WMK Architecture)

As demonstrated in the preceding overshadowing analysis for the RFB components, any additional shadowing from the proposal is limited, short in duration and largely confined to roof areas, side setback zones, the High Street road reserve and small portions of the UNSW campus. In this regard, while some overshadowing is unavoidable due to the site's orientation and the surrounding urban context, the incremental shadow footprint is fast moving and does not result in any unreasonable loss of solar access to adjoining residential properties.

Views

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The proposal will not adversely impact the amenity of adjoining or neighbouring land in terms of views. The site currently accommodates a 2-storey building, and its immediate context comprises predominantly 2-storey buildings to the west and north, a 4-storey RFB 2 lots to the east, and 6-7 storey institutional buildings within the UNSW campus to the south along High Street. These UNSW buildings accommodate teaching and research spaces rather than residential uses and therefore do not rely on view corridors for residential amenity.

In terms of views, the only significant long-distance views potentially available in the locality are towards the east to Coogee Beach, approximately 2 km away (refer to figure below). Given the orientation of surrounding development, the proposed development will not obstruct or diminish any of these potential eastern view corridors. The topography of the area may also allow for some distant city skyline views, approximately 7 kilometres away, in the north-western direction.

While some UNSW buildings could experience partial view change, these buildings are not residential and therefore do not rely on outlook for residential amenity. The only nearby residential property that could be considered is 42 High Street, Randwick, located to the east of the subject site. However, any distant views from this location would be oriented to the northwest, and because the proposed building sits to the west of the site, it does not intrude into that potential view corridor.



Figure 13 Surrounding Views, site highlighted with star (Source: Near Map)

In terms of view impacts, it is important to note that if the outcomes of the Randwick Comprehensive Planning Proposal are realised, the High Street precinct will accommodate significantly taller mid-rise buildings (refer to figure below). This future built form will inevitably contribute to a degree of view loss across the precinct Notwithstanding this, the proposed development, due to its siting and its scale relative to the 8–9 storey heights envisaged under the Planning Proposal, minimises any potential view impacts.

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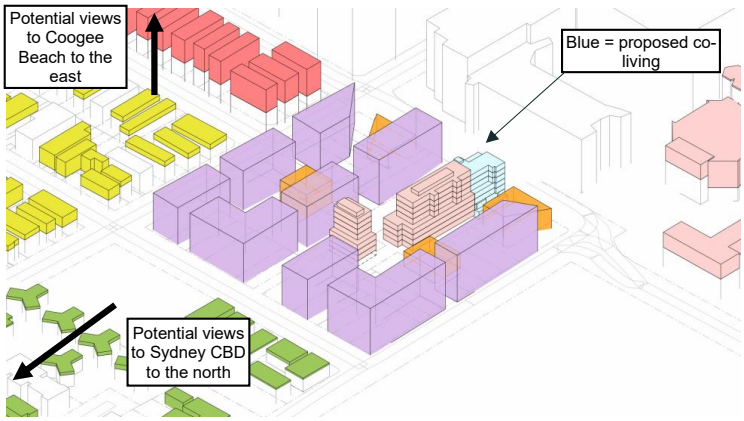


Figure 14 Wider Context based on outcomes of Randwick Comprehensive Planning Proposal

In addition to the above, the proposed height variation for the RFB component of the development is consistent with the aim of Section 162 of the Housing SEPP, which seeks to encourage the development of low and mid-rise housing in areas that are well located with regard to goods, services and public transport. The site is highly accessible, being directly opposite the UNSW High Street Light Rail Stop, within walking distance of frequent bus services, and in close proximity to major employment, education and health precincts including UNSW and the Randwick Health and Education Precinct, as well as nearby retail and community facilities. The height variation facilitates a mid-rise residential outcome that aligns with Council's strategic vision for the High Street corridor, enables efficient use of land in a well-serviced location, and supports increased housing supply without resulting in unreasonable amenity impacts.

5.2 The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.

This test is not relied upon. The underlying objective or purpose is relevant to the development.

5.3 The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.

This test is not being relied upon.

5.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

This test is not being relied upon.

5.5 The zoning of the land is unreasonable or inappropriate.

This test is not relied upon. The applicable land use zone (Zone R3 – Medium Density Residential) is reasonable and appropriate to the site.

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6. Sufficient Environmental Planning Grounds

In *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, Plain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the height of buildings development standard are as follows:

- The proposal is compatible with the desired future character of the locality, noting that Council's Randwick Comprehensive Planning Proposal (which has been adopted and forms part of the RLEP, with the specific provisions for this site being deferred) identifies the High Street corridor for mid-rise development of 8–9 storeys. Although this block was deferred from the proposal following UNSW's request for further assessment, the strategic vision remains relevant and demonstrates that increased height and density are anticipated in this area.
- The proposed height represents an appropriate outcome that sits below the 8–9 storey typology envisioned in the Planning Proposal and Housing Investigation Area (HIA) chapter, ensuring a built form that is consistent with the likely future urban character for High Street.
- The building envelopes incorporate a stepped massing that reduce visual bulk, provide a transition to lower scale residential areas and ensure the proposal does not appear visually dominant in its immediate context. Further refinement of the building's articulation, materials, and detailed massing will occur at the Detailed DA stage, noting that this application seeks concept approval only.
- Overshadowing impacts are acceptable, noting in the RFB overshadowing analysis, any additional shadow arising from the proposal is limited, short in duration and largely confined to roof areas, side setback zones, the High Street road reserve and small portions of the UNSW campus. While some overshadowing of residential properties occurs at the natural edges of the day, this is an unavoidable consequence of the site's orientation and surrounding urban form. Importantly, the incremental shadow footprint is fast moving, and all residential properties retain sufficient mid-day solar access, ensuring no unreasonable loss of amenity.
- View impacts are minimal, as the proposal does not intrude into significant view corridors to Coogee Beach (east) or potential distant city skyline views (north-west). Should the Planning Proposal outcomes be realised, taller buildings will form the High Street precinct, meaning some view change is expected, however, the siting of the proposal ensure that any incremental view impact is minimised.
- Privacy impacts can be appropriately managed post Concept DA (i.e. through detailed design as part of a future detailed DA). Detailed window placement, balcony orientation, screening and landscaping measures will be addressed at the detailed DA stage to ensure no unreasonable overlooking.
- The development does not adversely affect any heritage items or conservation areas, with substantial separation distances to Blenheim House and the Randwick Racecourse Conservation Area. The proposal does not interfere with the significance, setting or views to or from these heritage items.
- The proposal responds to the established and particularly, emerging built form of the precinct, aligning with Council's long-term vision for increased density and improved housing diversity along High Street while still maintaining an appropriate interface with surrounding properties.

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

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- Object (b) Facilitating ecologically sustainable development by supporting a transit-oriented built form in an accessible location within walking distance of bus services and directly opposite the UNSW High Street light rail stop. This reduces reliance on private vehicles and allows for the future integration of sustainability measures (via the preparation of the detailed DA) such as energy-efficient design, rooftop solar, water-sensitive landscaping and high-quality communal open space.
- Object (c) Promoting the orderly and economic use and development of land by enabling higher-density housing on a strategically located and well-serviced site that benefits from immediate access to public transport, employment/retail precincts and educational institutions. The development is consistent with the mid-rise future character envisaged for the High Street precinct and supports efficient urban land use.
- Object (d) Promoting the delivery and maintenance of affordable housing, noting that 15% of the GFA within the RFB component will be dedicated to affordable "purpose-built rental housing" for a minimum period of 15 years. The concept built form envelope for the RFB is capable of accommodating a diverse range of affordable rental apartment types, as it is neither restrictively narrow nor unduly constrained in dimension. This ensures that the affordable housing component can be delivered to an appropriate standard and support a range of household types, including key workers, students and lower-income residents who benefit from proximity to UNSW and the Randwick Health and Education Precinct. The envelope also supports the provision of market-rate apartments designed to meet demographic needs, with capacity for varied typologies suitable for singles, couples, families and downsizers. Artificially constraining the height of the RFB would directly undermine the strategic intent of the Housing SEPP by limiting the feasible delivery of both affordable and market-rate dwellings. The proposed height variation therefore enables a meaningful contribution to housing diversity and affordability within a well-serviced and strategically located precinct.
- Object (e) Protecting the environment, noting that the site does not comprise any known threatened species, ecological communities or habitat areas. The proposal also enables deep soil planting that support local biodiversity and improve environmental performance.
- Object (f) Promoting the sustainable management of built and cultural heritage as the proposal is sufficiently separated from Blenheim House and the Randwick Racecourse Conservation Area, ensuring no adverse impacts on their significance, setting or curtilage.
- Object (g) Promoting good design and amenity of the built environment through a concept that establishes appropriate stepping, improves the streetscape presence along High Street, and provides opportunities for high-quality architectural refinement at the detailed DA stage to ensure appropriate amenity, privacy, solar access and design quality.

For completeness, we note that the size of the variation is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]*.

In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for variations to be approved in the right circumstances.

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7. Conclusion

This Clause 4.6 Variation Request has demonstrated that:

- Compliance with the maximum permitted height control (22.75 metres) that applies to the RFB component under Sections 16 and 180 of the Housing SEPP would be unreasonable and unnecessary in the context of this Concept DA. The following is noted in this regard:
  - The proposal is consistent with the aims of the Housing SEPP, notwithstanding the variation.
  - The proposal is consistent with the objectives of Clause 4.3 in the RLEP on a first principles basis, notwithstanding the variation.
- There are sufficient environmental planning grounds to justify the proposed variation with respect to:
  - The envisaged land use intensity of development at the site, which is consistent with the concept envelopes for the RFB component and Council's strategic planning interest in the local area.
  - Alignment with the transitioning state of the local built form profile under State-led policy reforms, which intend to support the delivery of diverse, affordable housing options at accessible locations.
  - The efficient and appropriate distribution of built form volumes within the site, including in relation to the south-adjoining envelope for the co-living component.
  - An acceptable level of solar amenity will continue to be afforded to surrounding residential properties, noting that any additional overshadowing arising from the proposal is limited, short in duration and characterised by a fast-moving shadow footprint. The incremental shadowing is largely confined to roof areas, side setback zones, the High Street road reserve and small portions of the UNSW campus, with any overshadowing of nearby residential properties occurring only at the natural edges of the day. Importantly, all residential properties retain sufficient mid-day solar access, and no unreasonable loss of amenity will occur, having regard to:
    - The envisaged scale and density of development at the site.
    - The site's orientation and the configuration of adjoining allotments, within an established and evolving urban context.
    - State-led policy reforms that prioritise the delivery of housing, including affordable housing, in locations within walking distance of rapid public transport.
  - The character of the local area, including historic values that are associated with the Randwick Racecourse Conservation Area and Blenheim House.
  - The objectives of the EP&A Act.

On the above basis, it is appropriate for Council, as the consent authority, to exercise the flexibility conferred by Clause 4.6 of the RLEP to support the proposed variation.


GYDE
DEVELOPMENT APPLICATION
36/2026
Randwick City Council
27 January 2026
Records Received
Clause 4.6 Variation Request – FSR (Co-living)
36–38 High Street, Randwick
Submitted to Randwick City Council
on behalf of on behalf of CPDM High St Development DM Pty Ltd
17 December 2025

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Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

This report was prepared by:

Approver: Gannon Cuneo - Associate Director

Author: Oscar Davie – Senior Project Planner

Report Version: Final (Lodgement)

This report was reviewed by: Gannon Cuneo – Associate Director

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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1. Introduction

This Clause 4.6 Variation Request has been prepared in accordance with Clause 4.6 of the *Randwick Local Environmental Plan 2012* (**RLEP**) to support a Concept Development Application (**Concept DA**) that seeks approval for a mixed-use concept scheme at 36–38 High Street, Randwick (**the site**). The concept scheme includes the following land use components:

- 7-storey co-living component (the subject of this Clause 4.6 Variation Request).
- 2x 8-storey residential flat buildings (not relevant to this Clause 4.6 Variation Request).

This report establishes grounds for a variation to the non-discretionary Floor Space Ratio (**FSR**) control (0.825:1) that applies to the co-living component of the proposal under Clause 68(2)(a)(ii) of the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**).

Clause 68(2)(a)(ii) of the Housing SEPP prescribes a maximum FSR of 0.825:1 for the co-living component, which is subject to a 10% bonus above the local FSR control under Clause 4.4 of the RLEP (0.75:1). The co-living component has a Gross Floor Area (**GFA**) of 2,394m² and occupies only part of the total site area. For the purposes of this request, land accommodating the co-living component constitutes the 'notional site area', being 687.7m². Based on this notional site area, the FSR of the co-living component is 3.5:1.

When the proposed variation is expressed in numerical terms (+2.675 above 0.825), it equates to 324% of the standard to be varied. In the context of this Concept DA, use of a notional site area to calculate the extent of the proposed FSR variation is appropriate because the standard to be varied only applies to the co-living component. This approach is consistent with established case law, including:

- *Mulpha Norwest Pty Ltd v Hills Shire Council* [2020] NSWLEC 74.
- *Perpetual Corporate Trust Ltd v Randwick City Council* [2021] NSWLEC 1380.

Clause 4.6 is intended to provide flexibility in the application of development standards where strict compliance would hinder the attainment of better planning outcomes. The degree of permissible departure from a numerical standard is not constrained: see *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85]. As affirmed in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 and upheld on appeal, Clause 4.6 is not subject to any implied maximum extent of variation. In brief terms, strict compliance with the FSR standard is unreasonable and unnecessary in this case, noting:

- Notwithstanding the proposed variation, the concept built form envelope for the co-living component:
  - Is in keeping with the envisaged character and land use intensity of development at the site, including in relation to Council's overarching strategic vision for the area.
  - Responds proportionately to the scale of the concept built form envelope for the proposed residential flat building component, which adjoins the proposed co-living component to the north. In this regard, it is noted that a compliant scenario would result in a visually jarring built form transition between these two land use components.
  - Will accommodate co-living housing, which is an increasingly important diverse housing typology within the broader rental market because it responds to shifting household compositions, affordability constraints, and demand for flexible tenure arrangements, particularly among students, key workers and single-person households.
- A compliant scenario would limit the delivery of co-living housing in the absence of reasonable environmental planning grounds. This would undermine the intent of the *National Housing Accord 2022*.
- The proposed variation is consistent with the aims of the Housing SEPP, the objectives of Clause 4.4 within the RLEP (on a first principles basis), and will not contribute towards any unacceptable reduction to the level of amenity that is currently afforded to surrounding properties or the public domain.

This Clause 4.6 Variation Request demonstrates that the proposed variation to Clause 68(2)(a)(ii) of the Housing SEPP is justified in relation to the co-living component. Compliance with the development standard is both unreasonable and unnecessary in the circumstances, and there are sufficient environmental planning grounds to support the contravention.

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2. Proposed Development

The Concept DA seeks approval for a conceptual built form envelope that includes a 7-storey co-living component and two 8-storey residential flat buildings. The built form concept makes appropriate provision for basement parking, communal open spaces, and associated landscaping / civil works.

This Clause 4.6 Variation Request only relates to the co-living component, which has a proposed FSR of 3.5:1. The FSR is the co-living component derives from:

- The GFA of the co-living component (2,394m^2), as outlined by the area schedule within the architectural drawings that have been prepared by WMK Architecture (refer to Drawing Sheet DA 500).
- The notional site area of 687.7m^2 for the co-living component (refer to **Section 4.1**), which does not include the residential flat building component.

A separate Clause 4.6 variation request has been prepared in relation to FSR of the residential flat building component.

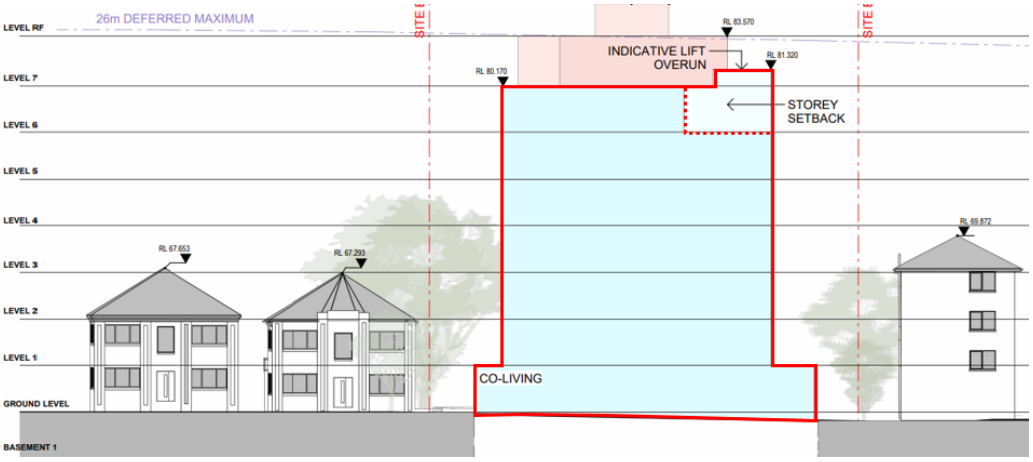


Figure 1 **North Elevation: Co-Living Component (Red Outline) – Concept Envelope (Source: WMK Architecture)**

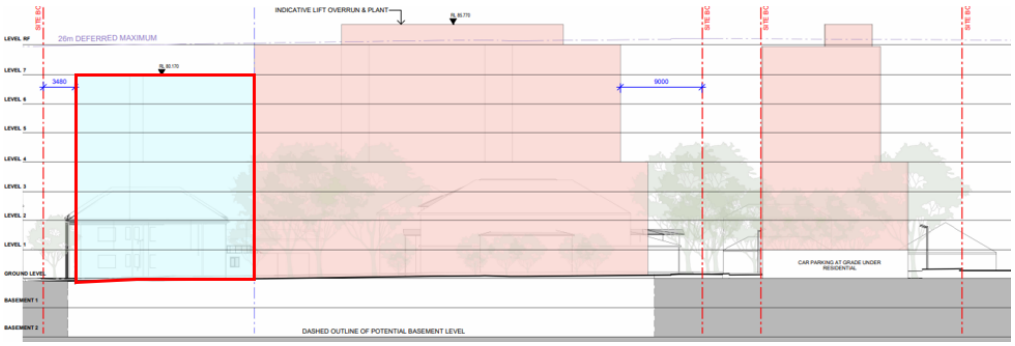


Figure 2 **West Elevation: Co-Living Component (Red Outline) – Concept Envelope (Source: WMK Architecture)**

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3. Standard to be Varied

The non-discretionary development standard to be varied is the maximum permitted FSR control (0.825:1) that applies to the co-living component under Clause 68(2)(a)(ii) of the Housing SEPP. The standard to be varied includes a 10% bonus above the local FSR control that is mapped in relation to the site (0.75:1) under Clause 4.4 of the RLEP.

In *Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49, the NSW Land and Environment Court (**LEC**) confirmed that non-discretionary development standards are capable of being varied. In this regard, it is noted that the maximum permitted FSR control (0.825:1) that applies to the co-living component:

- Is consistent with the definition for 'Development Standard' under Section 1.4 of the EP&A Act.
- Is not excluded from the operation of Clause 4.6 in the RLEP.
- Is a numerical development standard that establishes a 'maximum' FSR for the co-living component. The application of this control is not a discretionary matter – it is prescriptive. Pursuant to Clause 68(2)(a)(ii) of the Housing SEPP, the maximum permitted FSR for the co-living component is 0.825:1 because residential flat buildings are a permitted land use in Zone R3 – Medium Density Residential.
- Overrides the local FSR standard that is mapped in relation to the site under Clause 4.4 of the RLEP, which does not apply to the co-living component.

Accordingly, a variation is sought to the maximum permitted FSR control (0.825:1) that applies to the co-living component under Clause 68(2)(a)(ii) of the Housing SEPP.

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4. Extent of Variation

The proposed co-living component occupies a notional site area of 687.7m^2. The GFA of the co-living component is 2,394m^2, resulting in a FSR of 3.5:1 (rounded to one decimal) when this is divided by the notional site area (refer to **Section 4.1**).

In numerical terms, the FSR of the co-living component exceeds the standard to be varied (0.825:1) by +2.675. This exceedance equates to 324% of the standard to be varied. As affirmed in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 and upheld on appeal, Clause 4.6 is not subject to any implied maximum extent of variation.

4.1 Notional Site Area

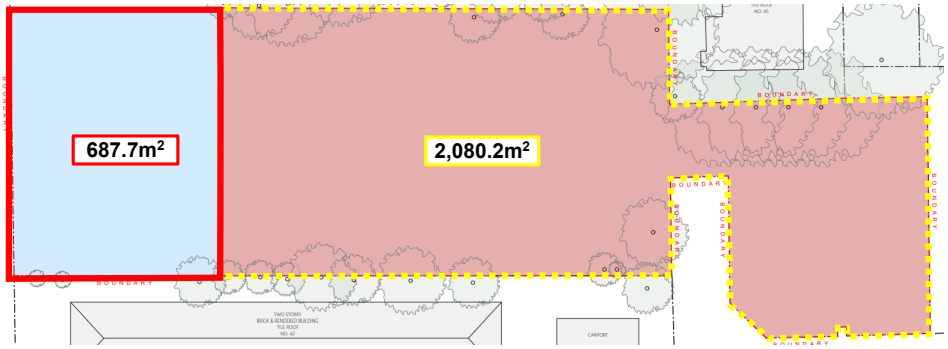
The extent of the proposed FSR variation is based on a notional site area of 687.7m^2 for the co-living component. The notional site area that has been used to derive the extent of the proposed variation excludes the residential flat building component, which is subject to a separate FSR control under the Housing SEPP.

Established case law principles have determined that where a single allotment (or 'site') is subject to two different FSR controls, the FSR must be assessed separately for each part of the site, not averaged or 'spread' across the total site area. This approach is reflected in:

- *Mulpha Norwest Pty Ltd v Hills Shire Council* [2020] NSWLEC 74.
- *Perpetual Corporate Trust Ltd v Randwick City Council* [2021] NSWLEC 1380.

No LEC decision takes a contrary view; local panels and practitioners cite Mulpha Norwest to avoid the 'blended' averaging of FSR.

In this case, the maximum permitted FSR control that applies to the co-living component under Clause 68(2)(a)(ii) of the Housing SEPP is not mapped. It is reasonably necessary to derive the area of application (or 'notional site area') for the standard to be varied based on the location of the co-living component within the site.



Notional Site Area for Co-Living Component (687.7m^2)
Applicable to this Clause 4.6 Variation Request.

Notional Site Area for Residential Flat Building Component (2,080.2m^2)
Not applicable to this Clause 4.6 Variation Request.

Figure 3 Co-Living Component – 'Notional Site Area' for this Variation Request (Source: WMK Architecture)

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5. Unreasonable or Unnecessary

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the RLEP.

The LEC held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

(1) The objectives of the development standard are achieved notwithstanding non-compliance with the standard (First Test).

(2) The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary (Second Test).

(3) The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Third Test).

(4) The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary (Fourth Test).

(5) The zoning of the land is unreasonable or inappropriate (Fifth Test).

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) *(Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]) and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31]).*

Nonetheless, each test has been considered below.

5.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Pursuant to Clause 68(2)(a)(ii) of the Housing SEPP, the maximum permitted FSR standard that applies to the co-living component is 0.825:1. There are no specific objectives that are stated in relation to this Development Standard within the Housing SEPP.

Where development standard objectives are absent, ambiguous, or permit multiple interpretations, their underlying purpose may be derived on a first-principles planning basis, having regard to the broader aims and policy intent of the relevant environmental planning instrument.

In this regard, it is acknowledged that the LEC has confirmed that development standards must be construed as part of the Environmental Planning Instrument (in this case, the Housing SEPP) as a whole (see *Strathfield Municipal Council v Poynting* [2001] NSWCA 270 at [94]).

Accordingly, in the absence of explicit objectives for the standard to be varied, the proposed variation is properly assessed against the overarching aims and principles of the Housing SEPP, which provide the relevant policy context and intent. The objectives of Clause 4.4 within the RLEP have also been assessed on a first principles basis.

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5.1.1 State Environmental Planning Policy (Housing) 2021

5.1.1.1 Chapter 1, Section 3 – Principles of Policy

The proposed development is consistent with each principle of the Housing SEPP, as demonstrated below.

Table 1 Consistency with Housing SEPP Principles

Principle	Consistency
(a) Enabling the development of diverse housing types, including purpose-built rental housing.	The co-living component supports housing diversity by enabling the future delivery of a purpose-designed co-living housing form under a subsequent detailed DA. Co-living housing is a distinct and increasingly important housing typology within the broader rental market because it responds to demonstrable shifts in household composition, affordability constraints, and demand for flexible tenure arrangements, particularly among students, key workers and single-person households. The co-living housing typology inherently supports affordability outcomes by offering smaller private living spaces complemented by shared communal facilities, resulting in lower per-dwelling construction and occupancy costs relative to conventional residential flat buildings. The proposal therefore makes a meaningful contribution to the Housing SEPP objective of facilitating lower-cost rental accommodation within an established urban area with excellent access to employment, education and services. It is further noted that 15% of the GFA of the residential flat building component (which is the subject of a separate Clause 4.6 Variation Request) will provide affordable housing for a minimum of 15 years. Together, the lower per-dwelling occupancy costs associated with co-living housing and the nomination of affordable apartments respond directly to the statutory objective for the R3 Zone to *"encourage housing affordability"* under the RLEP. While the residential flat building component does not have a direct statutory association with this Clause 4.6 Variation Request, it is noted that this component will be complemented by the accommodation of co-living housing at the site. This responds directly to the statutory objective for the R3 Zone to accommodate a *"variety of housing types within a medium density residential environment"* under the RLEP.
(b) Encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability.	The co-living housing component provides a housing form that is particularly suited to very low, low and moderate income households who are often excluded from traditional housing markets due to escalating rental costs. This will be complemented by the 15% affordable housing nomination for the residential flat building component. The co-living component will assist towards increased housing choice within an accessible location proximate to UNSW, the Randwick Health and Education Precinct and public transport corridors, directly supporting social equity and workforce accommodation outcomes. The proposal expands the range of housing options available within the locality by introducing a purpose-built rental housing typology that differs from conventional residential flat buildings. This diversification strengthens the resilience and inclusivity of the local housing market in accordance with Housing SEPP principles.

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Principle	Consistency
(c) *Ensuring new housing development provides residents with a reasonable level of amenity.*	As outlined within the SEE, the co-living component is capable of achieving satisfactory building separation outcomes consistent with the intent of the *NSW Apartment Design Guide* (**ADG**), including: • 3m side setbacks from the ground level to Level 3. • 5m to 6m side setbacks from Level 4 to Level 7. As outlined within **Table 2**, the concept built form envelope for the co-living component will not contribute towards any unacceptable overshadowing due to: • The location of the site in relation to adjoining road reservations and the UNSW campus to the south. • The current extent of shadow footprints that are cast by existing development at the site and surrounding development. • Marginal footprint of additional overshadowing in the morning (west) and late afternoon (east) that is short-duration and an unavoidable consequence of the site's orientation and urban context. All surrounding residential properties will retain adequate solar access during the middle part of the day, with the balance of additional shadow falling on the public domain or institutional land that does not rely on sunlight for residential amenity. Fine-grain design consideration of amenity matters (such as the level of privacy afforded to existing and future residents) will be a focal point when detailed design approval is sought to redevelop the site. This approach, which is consistent with standard industry practice where concept design approval(s) are first sought, will address the need for any fine-grain adjustments at an appropriate stage of the project lifecycle.
(d) *Promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.*	The site is strategically located within the Arthur Street Housing Investigation Area (HIA), which benefits from established and planned infrastructure, including frequent public transport services, proximity to UNSW, the Randwick Health and Education Precinct, Royal Randwick Racecourse, and the Randwick Junction town centre. The proposal, including the co-living component, reinforces the Housing SEPP objective of delivering higher-density rental housing within well-serviced urban locations where residents can make efficient use of existing and planned infrastructure; reducing car reliance and supporting sustainable transport outcomes.
(e) *Minimising adverse climate and environmental impacts of new housing development.*	The accompanying SEE demonstrates that the proposed development will not result in any unacceptable adverse environmental impacts and is capable of achieving compliance with relevant environmental performance standards at the Detailed DA stage. The Concept DA envelope is capable of accommodating a wide range of sustainable design initiatives, including renewable energy generation (solar PV), water-sensitive urban design, high-performance building fabric, and energy-efficient services. This matter will be given appropriate consideration when detailed design approval is sought.
(f) *Reinforcing the importance of designing housing in a way*	The scale and density of the proposed co-living housing component align with the planned evolution of the Arthur Street HIA as a mid-rise residential precinct supported by Council's strategic planning framework and State housing delivery objectives. Further reference should be made to extended discussion that has been provided in relation to this matter within **Table 2**.

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Principle	Consistency
that reflects and enhances its locality.	The site does not contribute to the significance of any heritage item or conservation area. The proposal is sufficiently separated from the Randwick Racecourse Conservation Area and surrounding heritage items such that no physical or visual impacts arise. The contemporary built form response is therefore appropriate and reflective of the evolving urban character of the Arthur Street HIA. Further reference should be made to extended discussion that has been provided in relation to this matter within **Table 2**.
(g) Supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use.	The co-living component of this Concept DA does not seek approval for short-term rental accommodation and does not preclude such use where otherwise permissible under the relevant planning controls. The proposed co-living component does not undermine the Housing SEPP objective of supporting short-term rental accommodation as a complementary housing activity where appropriately managed.
(h) Mitigate loss of existing affordable housing.	The proposal will not result in the loss of any existing dwellings that meet the definition of 'affordable housing' under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Further, by supporting the introduction of a new supply of purpose-built co-living accommodation, the development contributes positively to the affordable rental housing stock within the locality and actively mitigates housing affordability pressures, consistent with the intent of the Housing SEPP.

5.1.2 Randwick Local Environmental Plan 2012 – Objectives of Clause 4.4

The relevant principles and objectives of the Housing SEPP, as addressed within **Section 5.1.1.1**, prevail over the objectives of Clause 4.4 in the RLEP, which relate to a FSR standard that does not apply to this Concept DA.

Notwithstanding, for completeness, the objectives of Clause 4.4 are addressed in the table below on a first principles basis. The assessment below demonstrates that the proposed development is consistent with each objective of Clause 4.4 on this basis.

Table 2 Objectives of Clause 4.4 (RLEP)

Objective	Demonstration
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	The proposal is demonstrably consistent with, and reinforces, the desired future character of the locality. The size and scale of the concept built form envelope is compatible with the desired future character of the locality with regard for Council's strategic vision for the Arthur Street HIA, noting: • The adopted *Randwick Comprehensive Planning Proposal* (**Randwick Planning Proposal**) identifies the site within a key HIA that is broadly intended to accommodate substantial future housing growth in locations with high public

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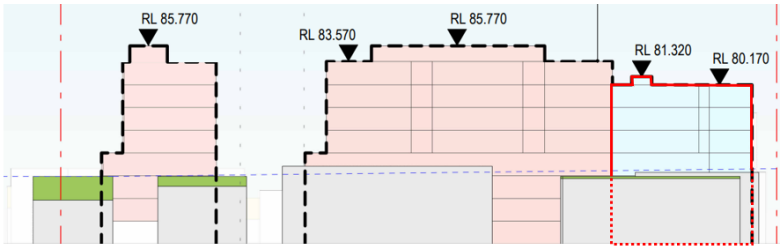
Objective	Demonstration
	transport accessibility and proximity to major employment, education, and health precincts. • Council previously identified the Arthur Street HIA as suitable for significant uplift, with an indicative built form of 8–9 storeys supported by a corresponding (deferred) FSR control of 3:1, which would still be subject to a 10% bonus under the Housing SEPP for co-living housing. • This vision aligns with broader State and District planning objectives, including delivery targets under the *National Housing Accord 2022*, that encourage increased residential densities at suitable locations. • Although the site was deferred from the draft rezoning at the Extraordinary Council Meeting of 30 August 2022—following a request from UNSW—this deferral did not alter or diminish Council's underlying strategic intent for increased density along High Street. Rather, it deferred the application of updated planning controls (including the envisaged FSR control of 3:1) to this specific block pending further investigation. • Notwithstanding the deferred rezoning of the site, strategic planning material that has been prepared by Council to-date clearly envisages a cohesive mid-rise urban form along High Street that reflects the corridor's transport accessibility and proximity to UNSW, the Randwick Health and Education Precinct, Royal Randwick Racecourse and Randwick Junction. The co-living component presents an appropriate and proportionate built form response with a FSR of 3.5:1. While this marginally exceeds the envisaged (deferred) FSR control of 3:1, it is noted that: • The co-living component is subject to a 10% FSR bonus under the Housing SEPP. If the envisaged (deferred) FSR control of 3:1 was applied in this context, it would increase to 3.3:1. This is materially consistent with the scale of the proposed co-living component, which has a FSR of 3.5:1. • At seven storeys, the size and scale of the co-living component sit comfortably below the envisaged (deferred) 8–9 storey mid-rise typology identified in the Planning Proposal and broader HIA urban design analysis. • The building envelope incorporates stepping and adequate separation to ensure a sensitive interface with adjoining development while still contributing to the envisaged mid-rise character form. **Figure 4 Initially Proposed (Deferred) FSR Control (3:1)**  *Source: Randwick City Council*
(b) *to ensure that buildings are well articulated and respond*	The co-living component accommodates the additional floor space through an envelope that is appropriately modulated, stepped and articulated to manage perceived scale and maintain a suitable relationship with adjoining properties. The Concept DA form ensures that detailed architectural resolution—such as refined articulation and modulation—can occur at the subsequent DA stage.

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Objective	Demonstration
to environmental and energy needs,	The co-living component will be accommodated within a high-performing built form envelope that is capable of enabling sustainable design interventions through detailed design development. Specifically, this Concept DA does not limit the detailed design viability of sustainable design interventions (for instance, solar panels, water sensitive landscaping and energy efficient fixtures).
(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 site is located approximately 60 metres east of the Randwick Racecourse Conservation Area; however, the proposed development does not interface with the conservation area and will not affect its identified heritage values. The Draft Randwick Development Control Plan – B2 Heritage confirms that the significance of the conservation area derives from attributes such as narrow lot subdivision patterns, consistent setbacks, traditional pitched and gabled roof forms, brick and stucco materials, terracotta and slate roofing, and federation-style verandah detailing. These characteristics relate specifically to the built form and landscape qualities internal to the racecourse precinct. The subject site is sufficiently removed so that the proposal does not alter subdivision patterns, modify heritage fabric, or influence the characteristic elements that contribute to the conservation area's significance. Several heritage items within the racecourse grounds—including the Members' Stand/Official Stand and the Tramway Turnstile Building Complex—are located approximately 1 km to the north-west. These items are physically and visually separated from the site by intervening development and the expansive racecourse grounds, ensuring that the proposal does not impact their heritage significance. Likewise, *"Blenheim House and Outbuilding"*, situated approximately 230 metres to the east, is separated by existing development and public road corridors, with no direct interface that would give rise to adverse impacts. The applicable DCP does not identify any contributory buildings within or adjoining the subject site, and there is no established heritage streetscape or local character that the proposal is required to reinforce or replicate. Given the substantial separation distances, the absence of any physical or visual relationship to identified heritage items, and the lack of any contribution by the site to the significance of the conservation area, the proposal is compatible with the surrounding heritage context and will not adversely affect any heritage item or conservation area. It is noted that recent State Significant Development (SSD) approvals, including the Royal Randwick Racecourse Hotel (SSD-38019507), Winx Stand (SSD-10285), and Stables Precinct (MP10_0098) have sufficiently managed the introduction of a contemporary built form profile within the Randwick Racecourse Conservation Area.
(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.	**Visual Bulk:** The proposed FSR variation will not result in adverse visual bulk impacts on adjoining or neighbouring properties. The seven-storey co-living building sits below the 8–9 storey mid-rise form identified in the Randwick Planning Proposal for the High Street Housing Investigation Area, demonstrating consistency with the locality's desired future character. The concept massing incorporates stepping, modulation and appropriate separation distances to surrounding lower-scale residential areas, which effectively reduces perceived bulk and provides a suitable transition in scale. As this is a Concept DA, detailed articulation, façade treatments, materiality and other refinements that will further mitigate visual bulk will be resolved at the Detailed DA stage. <u>Visually Coherent Built Form Outcome:</u> While this Clause 4.6 Variation Request only relates to the co-living component, it is necessary to consider the extent of the proposed variation within the context of the overall development.

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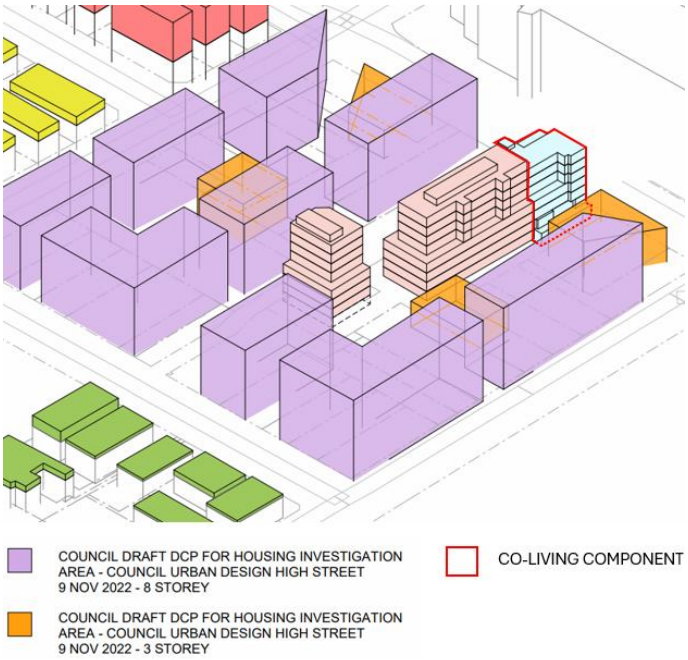
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Objective	Demonstration
	The co-living component has a GFA of 2,394m^2, while the residential flat building component has a GFA of 6,695m^2. The co-living component therefore accounts for a proportionately minor volume (26.3%) of the total GFA for both components (9,089m^2). The following is noted in this regard: • The residential flat building component, which accounts for the vast majority of the overall quantum of building mass, is subject to a maximum permitted FSR control of 1.95:1. A separate Clause 4.6 Variation Request has been prepared to establish independent grounds for a variation to this standard, which does not apply to the co-living component. The subsequent FSR of the residential flat building component is 3.1:1. • The co-living component, which accounts for a proportionately minor volume of building mass in this context, will have an FSR of 3.5:1. This is in keeping with the bulk and height of the residential flat building component, which will have a comparable FSR of 3.1:1.The difference (0.4) is appropriate to the smaller notional site area for the co-living component (687.7m^2) compared to the residential flat building component (2,080.2m^2). • If the co-living component was required to satisfy the maximum permitted FSR control of 0.825:1, this would: - Result in an outcome that is discordant with the bulk and height of development across the total site area, which is consistent with the desired future character of the local area. - Result in a visually jarring built form silhouette, including an irreconcilable built form transition between the co-living component and the residential flat building component. When lift overruns are not considered, the current proposal achieves a height reduction of 3.4m between the co-living component (RL 80.170m) and the adjoining residential flat building (RL 83.570m). Increasing the extent of this height transition would not be an appropriate built form response because the co-living component is adjoined to a residential flat building and only accounts for 26.3% of the total GFA. - Compromise the potential for a meaningful contribution towards the local supply of co-living housing. This would reduce local housing options for lower income households and key workers. - With respect to the points above, the proposed FSR exceedance for the co-living component is considered to contribute towards an overall built form profile that is visually coherent. **Figure 5 Co-Living Component – Built Form Transition with Residential Flat Building**  *Source: WMK Architecture*

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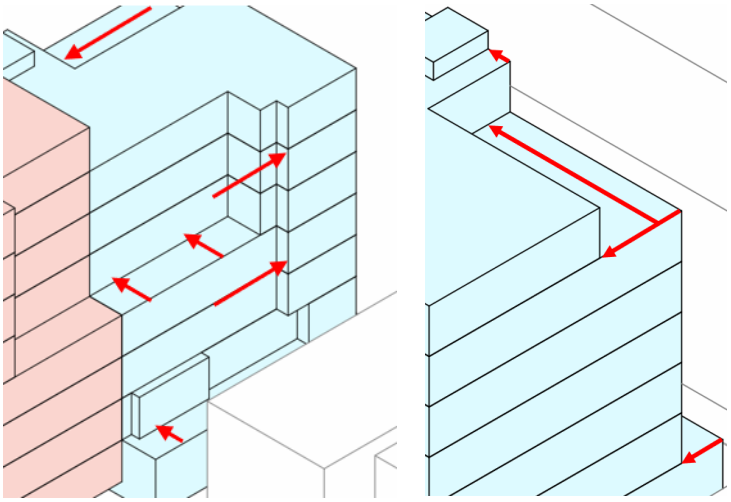
Objective	Demonstration

Figure 6 Co-Living Component and Envisaged Built Form Context



Source: WMK Architecture

Figure 7 Co-Living Component – Built Form Recessions



Source: WMK Architecture (annotated by Gyde)

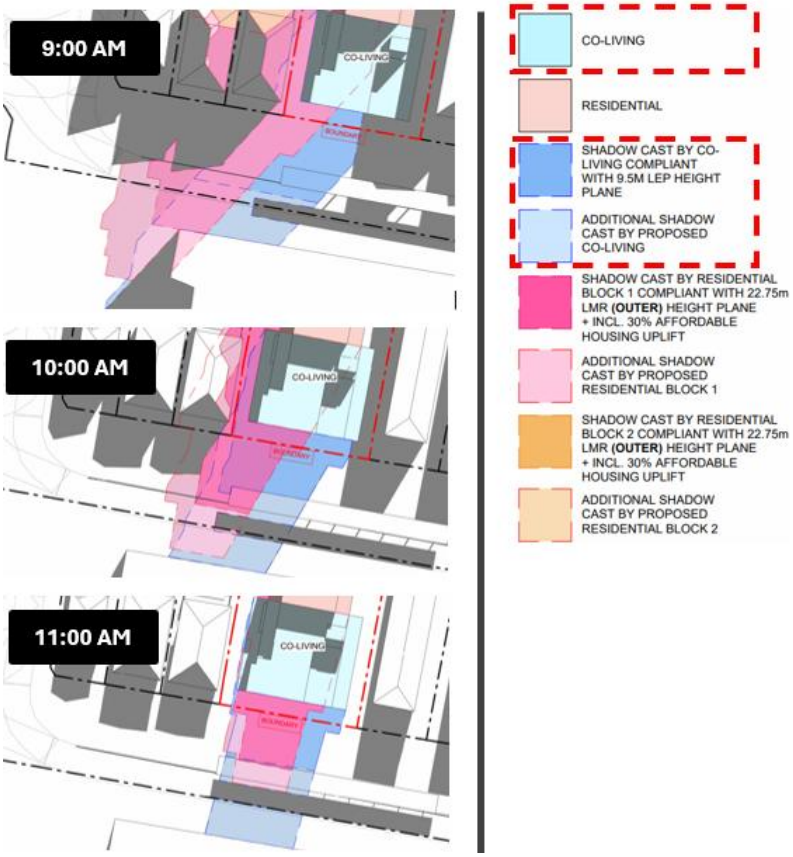
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Objective	Demonstration
	Privacy: As outlined within the Statement of Environmental Effects, the co-living component is capable of achieving satisfactory building separation outcomes consistent with the intent of the ADG. The concept built form envelope does not enable a scale of development that would unreasonably reduce the level of privacy afforded to surrounding properties. Specifically, this Concept DA establishes only the building envelope, height and general massing. Architectural elements that directly influence privacy—such as the placement and orientation of windows, balconies and internal layouts—do not form part of this application and will be subject to detailed resolution in the subsequent Detailed DA. At that stage, any required mitigation measures, including privacy screening, louvres, high-sill windows and landscape treatments, can be incorporated to ensure overlooking is avoided or appropriately minimised.
	Overshadowing: The co-living component, which accounts for 26.3% of the concept scheme's total GFA, will accommodate a proportionately minor volume of building mass relative to the residential flat building component. This is reflected in the extent of additional overshadowing that is attributed to the co-living component, which accounts for a small proportion of the fast-moving shadow footprint that will be cast by the entire proposal during Winter Solstice. Shadow Diagrams that delineate between shadowing that is cast by the co-living component and residential flat building component are provided within the accompanying Architectural Plans. The Shadow Diagrams demonstrate the following in relation to the co-living component: • **9:00 AM (Winter Solstice):** Additional overshadowing is confined to the road reservation and a small area of land within the UNSW campus. The extent of additional overshadowing that is cast by the co-living component is (in part) limited by existing shadow footprints from surrounding buildings. During this time, the co-living component will not result in any additional overshadowing to residential properties. • **10:00 AM (Winter Solstice):** As above, additional overshadowing that is attributed to the co-living component is confined to the High Street road reservation and a small area of land within the UNSW campus. During this time, the co-living component will not result in any additional overshadowing to residential properties. • **11:00 AM and 12:00PM (Winter Solstice):** As above, the shadow footprint that is cast by the co-living component at 11:00 AM and 12:00 PM continues to avoid any additional overshadowing to residential properties. The shadow footprint remains confined to institutional (UNSW) land and the road reservation. • **1:00 PM (Winter Solstice):** At 1:00 PM, the shadow footprint that is cast by the co-living component shifts notably to the west, however it remains generally confined to institutional (UNSW) land and the road reservation.

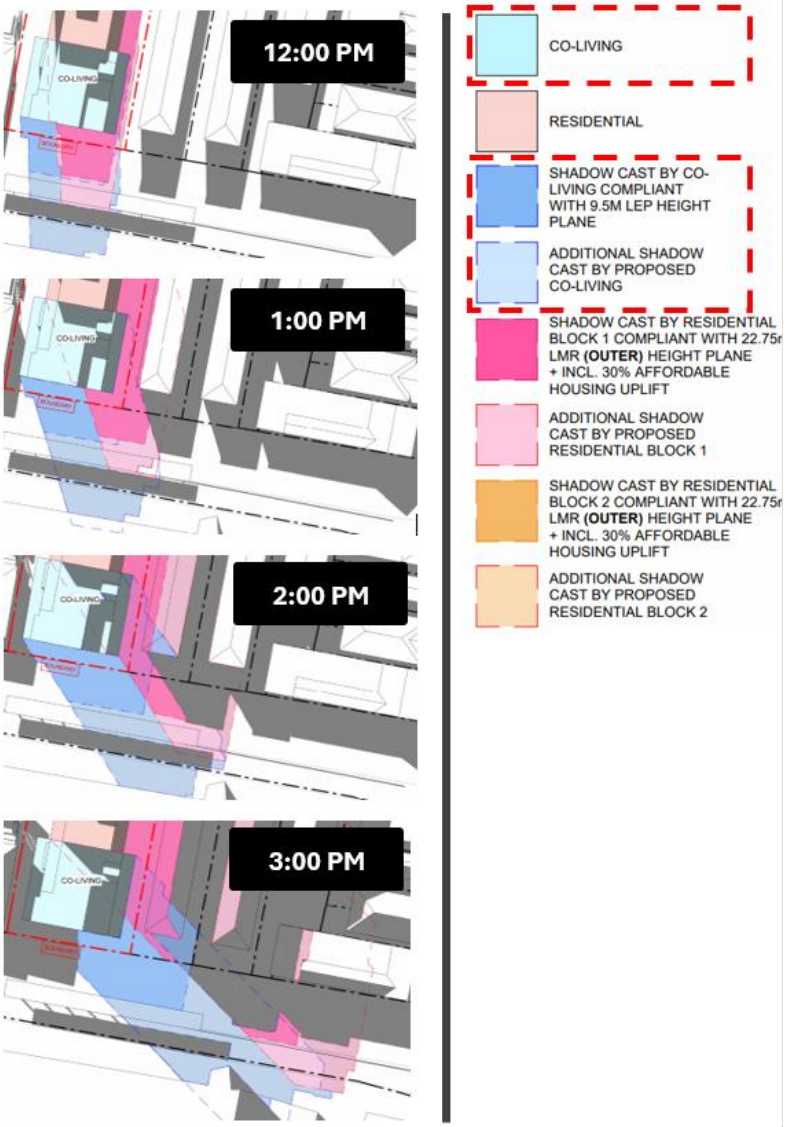
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Objective	Demonstration
	• **2:00 PM and 3:00 PM (Winter Solstice):** While the co-living component will contribute towards shadowing that is cast over a small area of land within the east-adjoining property at 42 High Street (including an area of non-habitable roof form): - The shadowing of this property that is associated with the co-living component is attributed to building mass that is located below the maximum permitted building height (9.5m). - The vast majority of the overall shadow footprint that is cast by the co-living component at 2:00 PM and 3:00 PM remains confined to institutional (UNSW) land and the road reservation. In summary, shadowing that is associated with the co-living component is acceptable and reasonable to anticipate under the applicable built form controls, including the standard to be varied. It will not result in an unreasonable reduction to the level of solar amenity that is afforded to surrounding residential properties. **Figure 8 Shadow Diagram Extracts 9:00 AM to 11:00 AM – Co-Living Component**  *Source: WMK Architecture*

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Objective	Demonstration
	Figure 9 Shadow Diagram Extracts 12:00 PM to 3:00 PM – Co-Living Component  *Source: WMK Architecture*
	Views: The proposal will not result in unacceptable view impacts. The site and its surrounds comprise primarily low- to mid-rise development, with residential buildings located to the west, north and east, and 6–7 storey institutional buildings within the UNSW

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Objective	Demonstration
	campus to the south. These UNSW buildings are non-residential (not student accommodation) and do not depend on distant outlooks for amenity. Potential significant views in the locality are long-distance easterly views towards Coogee Beach (approximately 2 km away) and, to a lesser degree, distant city skyline views to the north-west (approximately 7 km away). The orientation of existing development, combined with the siting of the proposed building, ensures that these potential view corridors are not obstructed or materially diminished. The nearest residential property potentially affected, 42 High Street, has its principal distant outlook oriented to the north-west. As the proposal is located to the west, it does not intrude into this view corridor. It is also relevant that, if the Randwick Planning Proposal is implemented, the High Street precinct will undergo substantial uplift, accommodating significantly taller mid-rise buildings. In that context, some broader view change is inevitable as part of the precinct's future evolution. Notwithstanding this, the moderated height and scale of the proposed development—sitting below the 8–9 storey typology envisaged for the corridor—ensure that any incremental view impacts are limited and reasonable.

5.2 The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.

This test is not relied upon. The underlying objective or purpose is relevant to the development.

5.3 The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.

This test is not relied upon.

5.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

This test is not relied upon.

5.5 The zoning of the land is unreasonable or inappropriate.

This test is not relied upon. The applicable land use zone (Zone R3 – Medium Density Residential) is reasonable and appropriate to the site.

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6. Sufficient Environmental Planning Grounds

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ confirmed that the *"sufficient environmental planning grounds"* required under Clause 4.6 must relate specifically to the element of the development that contravenes the development standard, rather than the development as a whole.

Further, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J held that a consent authority may consider whether the environmental planning grounds relied upon are particular to the circumstances of the site and proposal.

Having regard to these principles, the environmental planning grounds justifying the proposed variation to the maximum permitted FSR control (0.825:1) that applies to the co-living component are:

- **Consistency with the envisaged land use intensity.**

  The co-living component is consistent with the density outcomes anticipated for the Arthur Street HIA along the High Street frontage. The Randwick Planning Proposal identifies this precinct for mid-rise redevelopment supporting increased housing supply and urban renewal. Although this land block was deferred pending further assessment requested by UNSW, the underlying strategic intent of the Randwick Planning Proposal remains applicable and establishes that a higher intensity of development is reasonable and foreseeable at this location.

  The co-living housing component is in keeping with (and does not exceed) the 8-9 storey built form profile that is envisaged by the Randwick Planning Proposal and HIA chapter. The co-living component is subject to a 10% FSR bonus under the Housing SEPP. If the envisaged (deferred) FSR control of 3:1 was applied in this context, it would increase to 3.3:1. This is materially consistent with the scale of the proposed co-living component, which has a FSR of 3.5:1.

  In this regard, it is acknowledged that the land use intensity of the co-living component is reasonable to anticipate with respect to the envisaged height profile of development at the site.

- **Alignment with transitioning character and urban form.**

  The proposal sits comfortably within the emerging built form profile of High Street, which is undergoing strategic intensification. The additional floor space supports a more efficient and consolidated urban form and is consistent with Council's long-term vision for increased density and housing diversity near key transport, education and employment centres.

- **Efficient and appropriate distribution of built form.**

  The co-living component, which accounts for a proportionately minor volume of building mass with respect to the overall concept, will have an FSR of 3.5:1. This is in keeping with the bulk and height of the residential flat building component, which will have a comparable FSR of 3:1.The difference (0.4:1) is appropriate to the smaller notional site area for the co-living component (687.7m^2) compared to the residential flat building component (2,080.2m^2).

  The co-living component accommodates the additional floor space within an envelope that is appropriately modulated, stepped and articulated to manage perceived scale and maintain a suitable relationship with adjoining properties, including land within the UNSW campus to the south. In this regard, it is acknowledged that land along the High Street frontage that opposes the site to the south is subject to a maximum permitted building height control of 24m under Clause 4.3 of the RLEP, which is consistent with the highest point of the co-living envelope (lift overrun). The volume of building mass that can be accommodated within the co-living envelope, which includes stepped massing recessions below 24m, will not result in an outcome that is discordant with the envisaged built form height datum along the southern frontage of High Street.

  The Concept DA form ensures that detailed architectural resolution—such as refined articulation and modulation—can occur at the subsequent DA stage, enabling further optimisation of built form performance notwithstanding the FSR exceedance.

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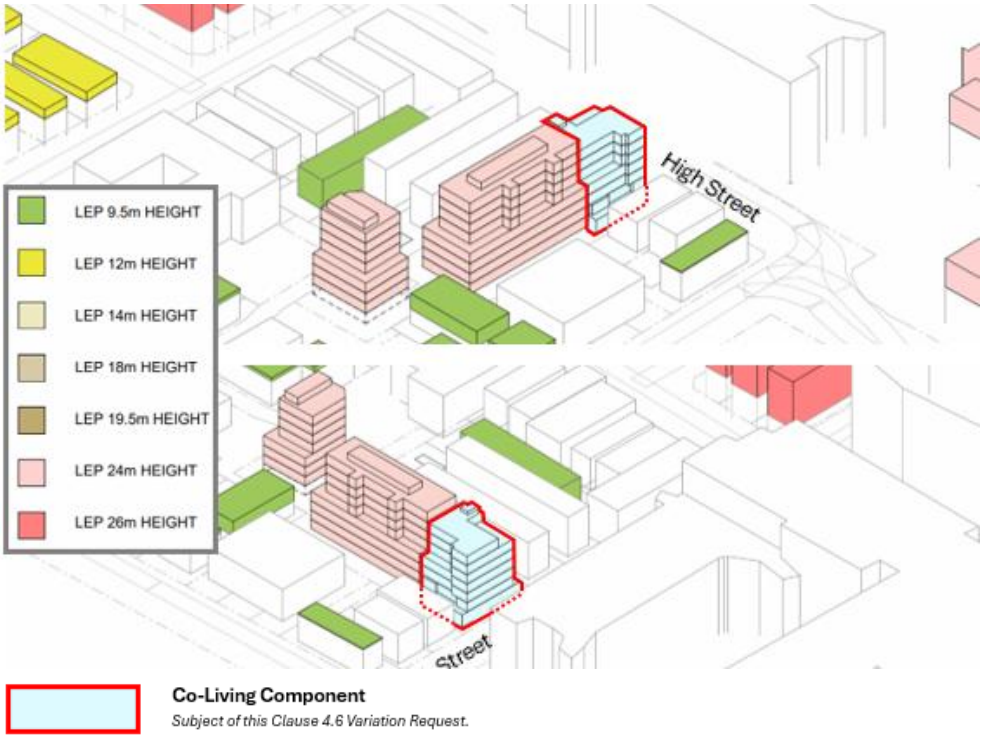


Figure 10 Surrounding Local Height Controls and Anticipated Massing (RLEP – Excl. LMR/IAH Provisions)

Source: NSW Spatial Planning Viewer (annotated by Gyde); WMK Architecture

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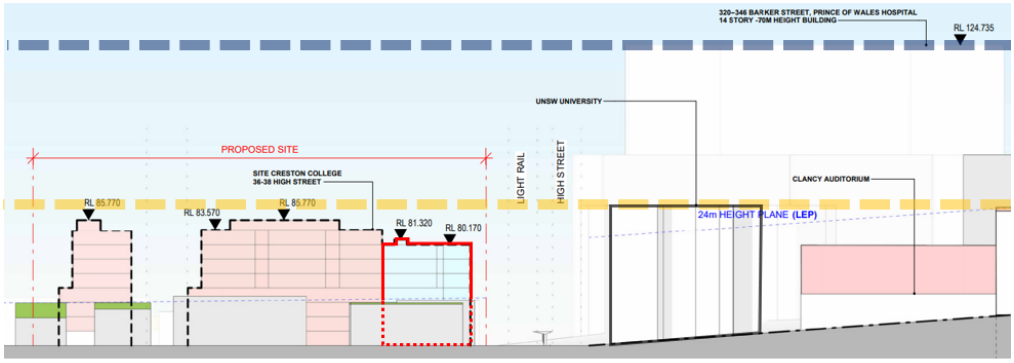


Figure 11 Section Drawing Extract: Height Profile of Development across High Street

Source: WMK Architecture (annotated by Gyde)

- **Acceptable solar access and overshadowing impacts.**

  The volume of building mass that is proposed outside of the permitted built form envelope will not result in any unacceptable additional overshadowing. The vast majority of additional overshadowing from the co-living component will be cast over the public domain and institutional (UNSW) land. While some additional overshadowing is proposed to surrounding residential properties in the early morning (west) and late afternoon (east), this is limited in duration, and arises from the natural orientation of the site and surrounding buildings. As demonstrated within **Table 2**, the co-living component will not result in any unacceptable shadow-related impacts, including in relation to surrounding residential properties.

- **No unacceptable impacts to existing views or high-amenity sightlines.**

  The bulk and scale of the concept built form envelope does not unreasonably encroach upon key view corridors towards Coogee Beach (east) or potential distant city skyline views (north-west). While future implementation of the Planning Proposal would introduce taller built forms along High Street, the siting of the co-living component ensures that any incremental view effects are limited and reasonable in a transitioning urban context.

- **No adverse impacts to historic values.**

  The uplift in floor area is sufficiently separated from Blenheim House and the Randwick Racecourse Conservation Area, ensuring that no impacts arise to their significance, curtilage or setting. It is noted that recent State Significant Development (**SSD**) approvals, including the Royal Randwick Racecourse Hotel (SSD-38019507), Winx Stand (SSD-10285), and Stables Precinct (MP10_0098) have sufficiently managed the introduction of a contemporary built form profile within the Randwick Racecourse Conservation Area.

- **Manageable privacy outcomes.**

  The proposed built form envelope for the co-living component, including floorspace that is attributed to the FSR variation, does not limit the potential for detailed design resolution with respect to privacy outcomes. Specifically, window placement, balcony orientation, screening and landscaping measures will be appropriately considered when detailed design approval is sought to ensure that the ultimate

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development outcome give practical effect to the statutory objective for development in the R3 Zone to *"protect the amenity of residents"* under the RLEP.

- **Delivery of a 'medium density' outcome for the site.**

  The first two objectives for the R3 Zone in the RLEP refer to the context of a *"medium density residential environment"*. In this respect, it is acknowledged that NSW case law has consistently demonstrated that the term 'medium density' does not have a single, universal legal definition. The proposal is consistent with the meaning and essential elements of a *"medium density residential environment"* in the context of the Arthur Street HIA, noting:

  - Despite the deferred status of a potential 3:1 FSR control that was initially proposed by the Randwick Planning Proposal, the reporting and urban design studies that were prepared to support the Planning Proposal refer to a built form profile of 8-9 stories in the context of an envisaged medium density character form, noting:
    - The *Arthur Street Housing Investigation Area Urban Design Report* (September 2022), which acknowledges that the *"Arthur Street HIA can provide for increased medium density residential apartment living"* (pg.23) with *"a maximum eight storey height limit"* (pg.24) along High Street.
    - The built form envelope for the co-living component enables a 7-storey building with select aspects that incorporate upper-level recessions. These massing recessions reduce parts of the concept envelope for the co-living component to 6 storeys in height.
  - An 8-9 storey (deferred) built form profile for development within and surrounding the site continued to be illustrated within the *Arthur Street Housing Investigation Area Urban Design Report* (September 2022) after the Extraordinary Council Meeting of 30 August 2022.
  - If Council had no intention of amending the maximum permitted FSR control to 3:1 in the ultimate term, the documented use of language (*"deferred"*) and continued visualisation of a 'deferred' 8-9 storey built form (refer to **Figure 12** [below] and **Figure 13** [overleaf]) profile for the western part of the Arthur Street HIA would not have been published after the Extraordinary Council Meeting of 30 August 2022. In this respect, the ongoing public articulation of a deferred built form outcome indicates that such an outcome has remained within the range of planning scenarios contemplated for the precinct, rather than being treated as spent or irrelevant. Ultimately, the concept envelope for the co-living component is consistent with Council's articulated long-term vision for development within the Arthur Street HIA.



Figure 12 Extract: *"Option 1 – 8 Storeys – View southeast – 3D modelling of building envelope scenarios"* (2022)

Source: Arthur Street Housing Investigation Area Urban Design Report (September 2022)

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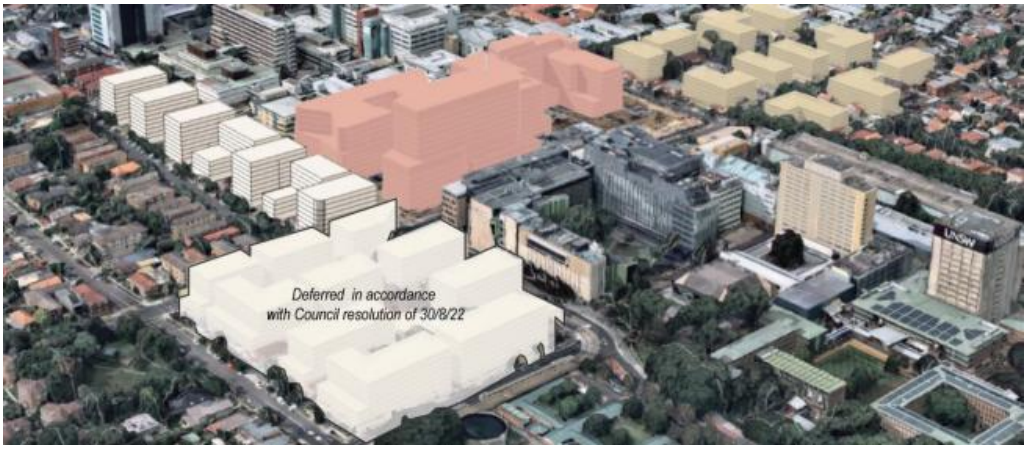


Figure 13 Extract: *"Option 2 – 9 Storeys – View southeast – 3D modelling of building envelope scenarios"* (2022)

Source: Arthur Street Housing Investigation Area Urban Design Report (September 2022)



Figure 14 Extract: Figure 10 within Part E7 – Randwick Development Control Plan (June 2023)

Source: Randwick Development Control Plan

The 'deferred' status of an 8-9 storey built form for the western part of the Arthur Street HIA was confirmed in 2022, before key State-led policy reforms came into effect and was later reconfirmed within Part E7 of the *Randwick Development Control Plan 2023* (refer above). In light of the current State-led reform agenda for delivering diverse, affordable housing options in accessible locations and delivery targets under the National Housing Accord, Council's reconsideration of this 'deferred' built form profile is reasonable and should be supported:

- In the isolated context of this Concept DA, which minimises the potential for any unacceptable impacts.
- In the current context of a State-led policy climate that prioritises the delivery of diverse, affordable housing options at accessible locations.
- With respect to the envisaged profile of development in the western part of the Arthur Street HIA and the long-standing 'deferred' status of precinct-wide provisions that are reasonable to consider in this case.

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The proposed development advances the objectives within Section 1.3 of the EP&A Act, notwithstanding the proposed FSR variation, including:

- **Objective (b) – Ecologically Sustainable Development:**

  The proposed FSR variation supports the accommodation of co-living floorspace in a capacity that is appropriate to the location of the site. This will leverage the proximity of high-frequency bus and light rail services that are located within walking distance. More broadly, it is noted that the FSR variation in relation to this Concept DA does not limit the detailed design viability of sustainable design interventions (for instance, solar panels, water sensitive landscaping and energy efficient fixtures).
- **Objective (c) – Orderly and Economic Use of Land:**

  The proposal enables higher-density housing on a strategically located, well-serviced site with immediate access to public transport, employment precincts and educational institutions. It accords with the mid-rise character anticipated for the Arthur Street HIA and promotes efficient urban land utilisation. A compliant design scheme would only limit viable co-living floorspace at an accessible location in the absence of any reasonable environmental benefits.
- **Objective (d) – Diverse, Affordable Housing:**

  While not an affordable housing scheme, the co-living component provides a more attainable rental product through private rooms with shared facilities and on-site management. This form of accommodation:
  - Benefits students, key workers and lower-income households located near UNSW and the Randwick Health and Education Precinct.
  - Reinforces the statutory objectives for development in the R3 Zone to *"encourage housing affordability"* and *"provide for the housing needs of the community within a medium density residential environment"* under the RLEP.

  A compliant concept scheme would restrict the delivery of co-living housing (a residential typology that will support the accommodation of essential talent in the local area). It is noted that recently, the LEC has exercised its discretion to recognise the meaningful contribution that co-living accommodation can make towards the delivery of affordable housing options (refer to *Freecity Alpha Development Pty Ltd v The Council of the City of Sydney* [2025] NSWLEC 1694).
- **Objective (e) – Environmental Protection:**

  The site contains no known threatened ecological values. The concept design scheme has made provision for deep-soil planting that supports biodiversity and improves urban environmental performance.
- **Objective (f) – Sustainable Management of Heritage Values:**

  As above, the proposal maintains adequate separation from heritage items, ensuring no adverse effect on their significance, views or curtilage.
- **Objective (g) – Good Design and Amenity:**

  The concept design scheme accommodates additional co-living floorspace (above what is permitted) within a high-performing built form envelope that will:
  - Enable a stepped built form outcome that recedes inwards as the height of the built form envelope increases.
  - Not limit the potential for further detailed design resolution with respect to privacy, amenity and overall design quality. In this regard, it is acknowledged that the concept built form envelope represents the maximum possible built form extent, and does not preclude future (detailed design) development from the expectation of achieving an amenable design outcome.

It is noted that the numerical extent of the variation is not, of itself, determinative of whether the variation may be approved. As confirmed in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85], Clause 4.6 imposes no quantitative limit on the degree of departure from a numerical standard.

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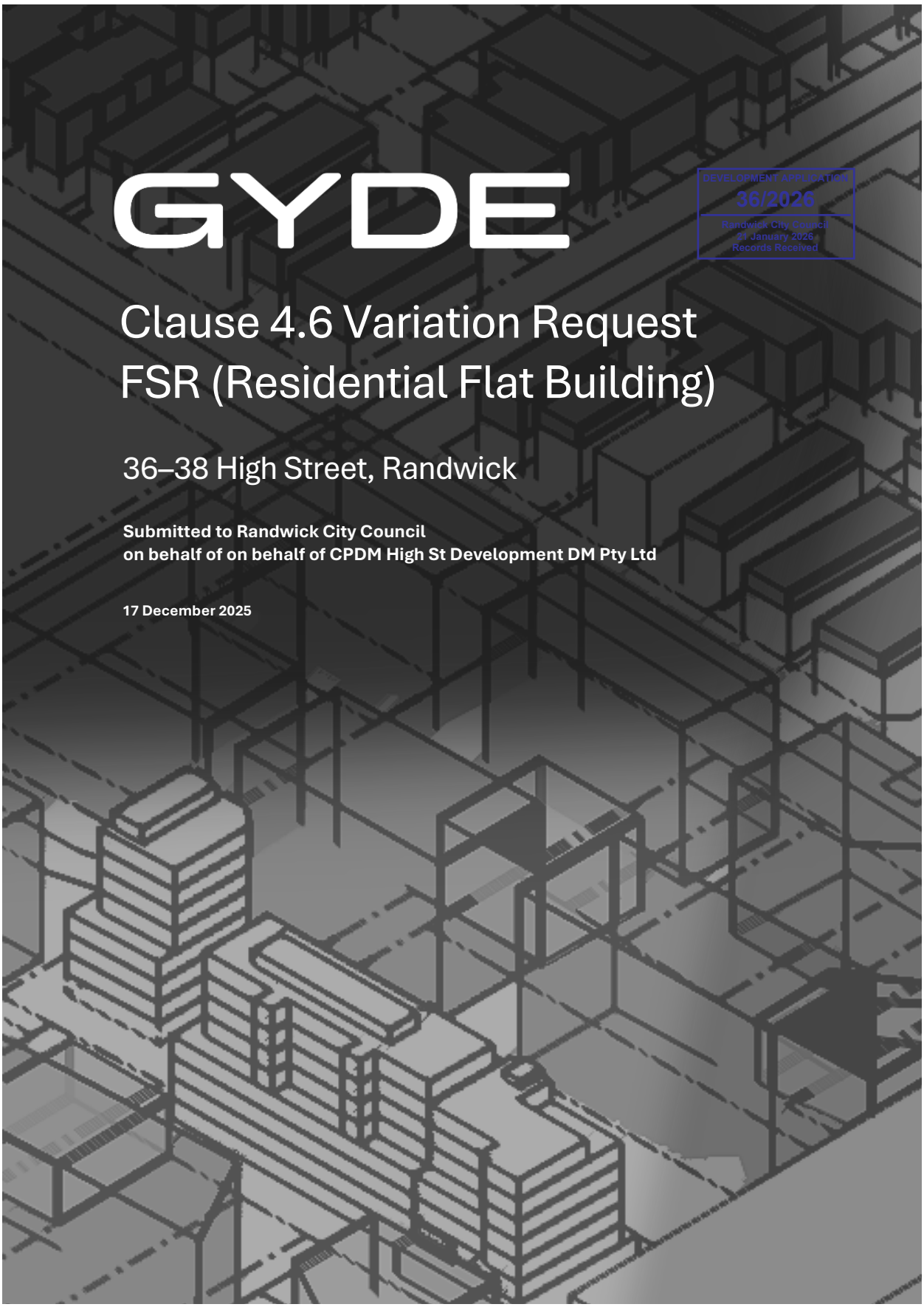
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7. Conclusion

Clause 4.6 is a performance-based mechanism, and variations may be approved where, as here, sufficient environmental planning grounds exist. Specifically, this Clause 4.6 Variation Request has demonstrated that:

- Compliance with the maximum permitted FSR control (0.825:1) that applies to the co-living component under Clause 68(2)(a)(ii) of the Housing SEPP would be unreasonable and unnecessary in the context of this Concept DA. The following is noted in this regard:
  - The proposal is consistent with the aims of the Housing SEPP, notwithstanding the variation.
  - The proposal is consistent with the objectives of Clause 4.4 in the RLEP on a first principles basis, notwithstanding the variation.
- There are sufficient environmental planning grounds to justify the proposed variation with respect to:
  - The envisaged land use intensity of development at the site and along High Street, which is consistent with the concept envelope for the co-living component and Council's strategic planning vision for the area.
  - Alignment with the transitioning state of the local built form profile under State-led policy reforms, which intend to support the delivery of diverse, affordable housing options at accessible locations.
  - The efficient and appropriate distribution of built form volumes within the site.
  - The acceptable level of solar amenity that will continue to be afforded to surrounding residential properties.
  - The character of the local area, including historic values that are associated with the Randwick Racecourse Conservation Area and Blenheim House.
  - The objects of the EP&A Act, which complement the State-led reform agenda that prioritises opportunities for diverse, affordable housing options in accessible locations. This is noted with respect to the long-standing 'deferred' status of built form provisions that were initially envisaged for the western part of the Arthur Street HIA by the Randwick Planning Proposal.
  - The numerical extent of the proposed variation, which, when considered in isolation of the reasonable grounds that are listed above, is not a relevant assessment matter.

On the above basis, it is reasonable for Council to exercise the flexibility conferred by Clause 4.6 of the RLEP to support the proposed variation.



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DEVELOPMENT APPLICATION
36/2026
Randwick City Council
21 January 2026
Records Received

Clause 4.6 Variation Request FSR (Residential Flat Building)

36–38 High Street, Randwick

Submitted to Randwick City Council
on behalf of on behalf of CPDM High St Development DM Pty Ltd

17 December 2025

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Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

This report was prepared by:

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Author: Oscar Davie – Senior Project Planner

Report Version: Final (Lodgement)

This report was reviewed by: Gannon Cuneo – Associate Director

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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1. Introduction

This Clause 4.6 Variation Request has been prepared in accordance with Clause 4.6 of the *Randwick Local Environmental Plan 2012* (**RLEP**) to support a Concept Development Application (**Concept DA**) that seeks approval for a mixed-use concept scheme at 36–38 High Street, Randwick (**the site**). The concept scheme includes the following land use components:

- 2x 8-storey residential flat building envelopes (the subject of this Clause 4.6 Variation Request), one of which is adjoined to the proposed co-living component.
- 7-storey co-living component (not relevant to this Clause 4.6 Variation Request).

This report establishes grounds for a variation to the non-discretionary Floor Space Ratio (**FSR**) control (1.95:1) that applies to the residential flat building component of the proposal under Clause 16(2) of the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**). The application of this control in relation to the residential flat building component is outlined below:

- **Section 180 of the Housing SEPP:**

  Clause 180(3)(a) establishes a baseline (non-discretionary) maximum permitted FSR control of 1.5:1 for residential flat buildings that are located within the low and mid rise housing outer area. This overrides the local FSR control that is mapped in relation to the site under Clause 4.4 of the RLEP (0.75:1).
- **Section 16 of the Housing SEPP:**

  Clause 16(2) enables up to a 30% bonus above the baseline maximum permitted FSR control of 1.5:1 that would otherwise apply under Clause 180(3)(a). When this non-discretionary bonus is applied, the maximum permitted FSR control increases to 1.95:1 because:
  - 15% of the total Gross Floor Area (**GFA**) for the residential flat building component will accommodate affordable housing.
  - Pursuant to Clause 180(2), a 30% FSR bonus applies to the residential flat building component because this equates to double (x2) the amount of floorspace that is nominated as affordable housing (15%).

The residential flat building component has a GFA of 6,695m^2 and occupies only part of the total site area. For the purposes of this request, land accommodating the residential flat building component constitutes the 'notional site area', being 2,080.2m^2. Based on this notional site area, the FSR of the residential flat building component is 3.1:1.

When the proposed variation is expressed in numerical terms (+1.15 above 1.95), it equates to 59% of the standard to be varied. In the context of this Concept DA, use of a notional site area to calculate the extent of the proposed FSR variation is appropriate because the standard to be varied only applies to the residential flat building component. This approach is consistent with established case law, including:

- *Mulpha Norwest Pty Ltd v Hills Shire Council* [2020] NSWLEC 74.
- *Perpetual Corporate Trust Ltd v Randwick City Council* [2021] NSWLEC 1380.

Clause 4.6 is intended to provide flexibility in the application of development standards where strict compliance would hinder the attainment of better planning outcomes. The degree of permissible departure from a numerical standard is not constrained (see *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85]). As affirmed in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 and upheld on appeal, Clause 4.6 is not subject to any implied maximum extent of variation. In brief terms, strict compliance with the FSR standard is unreasonable and unnecessary in this case for the following reasons:

- Notwithstanding the proposed variation, the concept built form envelope for the residential flat building component:
  - Is in keeping with the envisaged character and land use intensity of development at the site, including in relation to Council's overarching strategic planning intentions in the local area.
  - Will accommodate housing, including affordable housing, that will assist towards alleviating unaffordable market conditions for key workers and lower income households. Housing delivery

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within the low and mid rise housing outer area is consistent with the intent of the *National Housing Accord 2022*, which supports residential uplift at accessible locations.

- Facilitates an appropriate built form transition to the co-living component and adjoining residential properties.

- A compliant scenario would limit the delivery of housing, including affordable housing, which would result in an unreasonable and unnecessary outcome given the absence of reasonable environmental planning grounds. This would undermine the intended effect of the *National Housing Accord 2022*.
- The proposed variation is consistent with the aims of the Housing SEPP, the objectives of Clause 4.4 within the RLEP (on a first principles basis), and will not contribute towards any unacceptable reduction to the level of amenity that is afforded to surrounding properties.

This Clause 4.6 Variation Request demonstrates that the proposed variation to Clause 16(2) of the Housing SEPP is justified in relation to the residential flat building component. Compliance with the development standard is both unreasonable and unnecessary in the circumstances, and there are sufficient environmental planning grounds to support the contravention.

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2. Proposed Development

The Concept DA seeks approval for a conceptual built form envelope that includes a 7-storey co-living component and two 8-storey residential flat buildings. The built form concept makes appropriate provision for basement parking, communal open spaces, and associated landscaping / civil works.

This Clause 4.6 Variation Request only relates to the residential flat building component, which has a proposed FSR of 3.1:1. The FSR of the residential flat building component derives from:

- The GFA of the residential flat building component (6,695m^2), as outlined by the area schedule within the architectural drawings that have been prepared by WMK Architecture (refer to Drawing Sheet DA 501).
- The notional site area of 2,080.2m² for the residential flat building component (refer to **Section 4.1**), which does not include the co-living component.

A separate Clause 4.6 variation request has been prepared in relation to FSR of the co-living component.

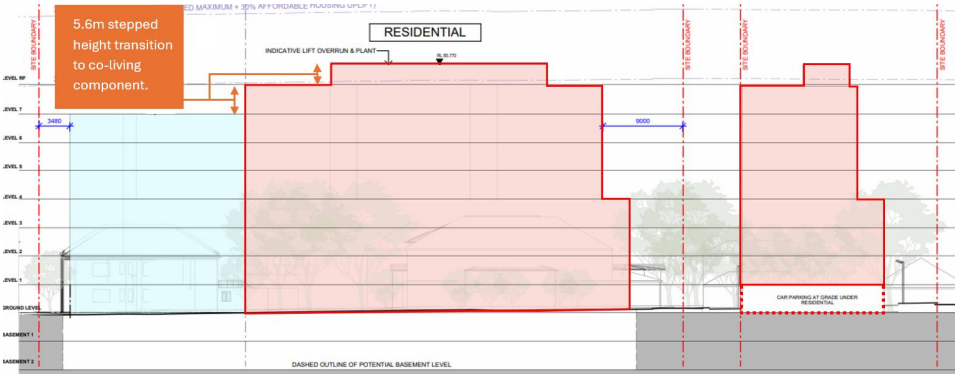


Figure 1 **West Elevation: Residential Flat Building Component (Red Outline) (Source: WMK Architecture)**

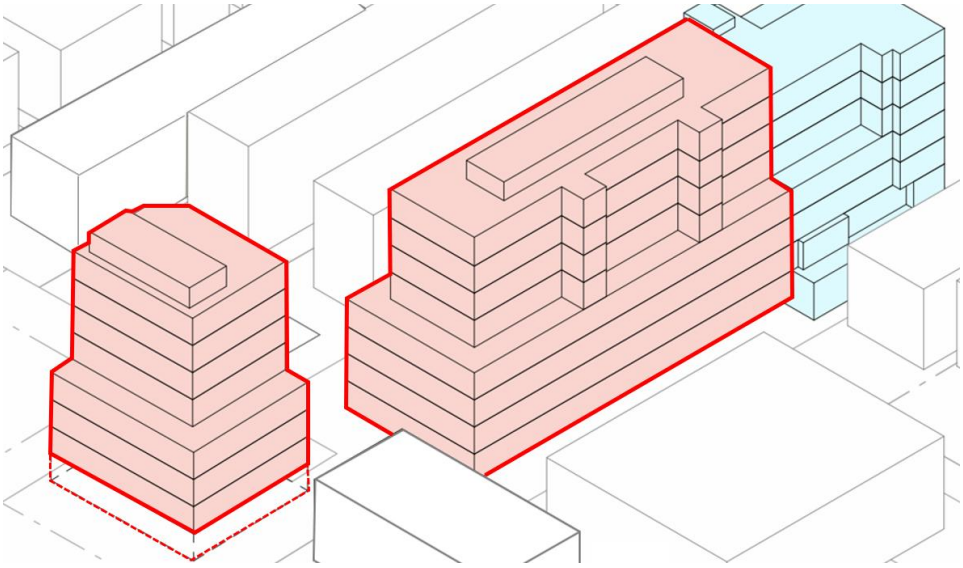


Figure 2 **Isometric Massing: Residential Flat Building Component (Red Outline) (Source: WMK Architecture)**

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3. Standard to be Varied

The non-discretionary development standard to be varied is the maximum permitted FSR control (1.95:1) that applies to the residential flat building component under Clause 16(2) of the Housing SEPP. The standard to be varied includes a 30% bonus that applies because 15% of the GFA for the residential flat building component will be nominated as affordable rental housing for a minimum period of 15 years.

In *Australian Unity Funds Management Ltd v Boston Nepean Pty Ltd & Penrith Council* [2023] NSWLEC 49, the NSW Land and Environment Court (**LEC**) confirmed that non-discretionary development standards are capable of being varied. In this regard, it is noted that the maximum permitted FSR control (1.95:1) that applies to the residential flat building component:

- Is consistent with the definition for 'Development Standard' under Section 1.4 of the EP&A Act.
- Is not excluded from the operation of Clause 4.6 in the RLEP.
- Is a numerical development standard that establishes a 'maximum' FSR for the residential flat building component. The following is noted in this regard:
  - The application of this control is not a discretionary matter – it is prescriptive.
  - Pursuant to Clause 16(2) of the Housing SEPP, the maximum permitted FSR for the residential flat building component is 1.95:1 because 15% of the GFA will be nominated as affordable housing.
- Overrides the following FSR development standards, which do not apply to the residential flat building component of this Concept DA:
  - The local FSR standard that is mapped in relation to the site under Clause 4.4 of the RLEP (0.75:1).
  - The baseline non-discretionary FSR standard under Clause 180(3)(a) of the Housing SEPP (1.5:1), which the 30% bonus is applied to under Clause 16(2) of the Housing SEPP.

In light of the points above, established case law principles have reaffirmed that the lawful standard to be varied by this request is the maximum permitted FSR control (1.95:1) that applies to the residential flat building component under Clause 16(2) of the Housing SEPP.

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4. Extent of Variation

The proposed residential flat building component occupies a notional site area of 2,080.2m^2. The GFA of the residential flat building component is 6,695m^2, resulting in a FSR of 3.1:1 (rounded to one decimal) when this is divided by the notional site area (refer to **Section 4.1**).

In numerical terms, the FSR of the residential flat building component exceeds the standard to be varied (1.95) by +1.15. This exceedance equates to 59% of the standard to be varied. As affirmed in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 and upheld on appeal, Clause 4.6 is not subject to any implied maximum extent of variation.

4.1 Notional Site Area

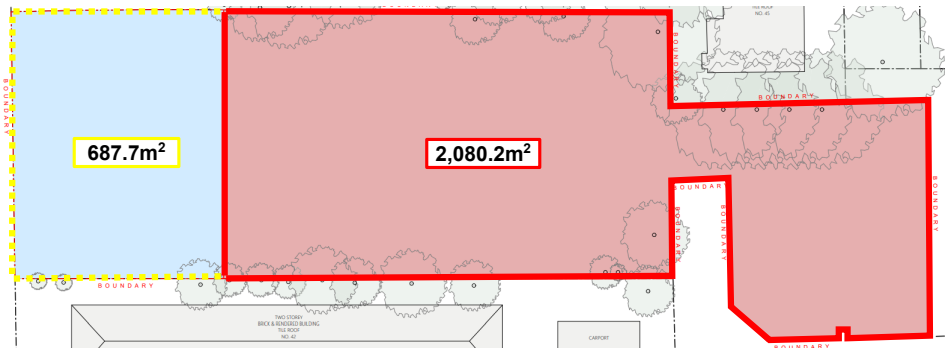
The extent of the proposed FSR variation is based on a notional site area of 2,080.2m^2 for the residential flat building component. The notional site area that has been used to derive the extent of the proposed variation excludes the co-living component, which is subject to a separate FSR control under the Housing SEPP.

Established case law principles have determined that where a single allotment (or 'site') is subject to two different FSR controls, the FSR must be assessed separately for each part of the site, not averaged or 'spread' across the total site area. This approach is consistent with established case law, including:

- *Mulpha Norwest Pty Ltd v Hills Shire Council* [2020] NSWLEC 74.
- *Perpetual Corporate Trust Ltd v Randwick City Council* [2021] NSWLEC 1380.

No LEC decision takes a contrary view; local panels and practitioners cite Mulpha Norwest to avoid the 'blended' averaging of FSR.

In this case, the maximum permitted FSR control that applies to the residential flat building component under Clause 16(2) of the Housing SEPP is not mapped. It is reasonably necessary to derive the area of application (or 'notional site area') for the standard to be varied based on the location of the residential flat building component within the site (refer to **Figure 3**).



Notional Site Area for Residential Flat Building Component (2,080.2m^2)
Applicable to this Clause 4.6 Variation Request.

Notional Site Area for Co-Living Component (687.7m^2)
Not applicable to this Clause 4.6 Variation Request.

Figure 3 'Notional Site Area' for this Variation Request (Source: WMK Architecture)

Note: Site boundaries (red and yellow) have been notated with reasonable accuracy for diagrammatic purposes. Area (m^2) values that are annotated in the figure above are precise. Further reference to the Site Survey should be made where appropriate.

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5. Unreasonable or Unnecessary

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the RLEP.

The LEC held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

(1) The objectives of the development standard are achieved notwithstanding non-compliance with the standard (First Test).

(2) The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary (Second Test).

(3) The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Third Test).

(4) The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary (Fourth Test).

(5) The zoning of the land is unreasonable or inappropriate (Fifth Test).

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) *(Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]) and SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 at [31]).*

Nonetheless, each test has been considered below.

5.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Pursuant to Clause 16(2) of the Housing SEPP, the maximum permitted FSR control that applies to the residential flat building component is 1.95:1. There are no specific objectives that are stated in relation to this Development Standard within the Housing SEPP.

Where development standard objectives are absent, ambiguous, or permit multiple interpretations, their underlying purpose may be derived on a first-principles planning basis, having regard to the broader aims and policy intent of the relevant environmental planning instrument.

In this context, the LEC has confirmed that development standards must be construed as part of the Environmental Planning Instrument (in this case, the Housing SEPP) as a whole (see *Strathfield Municipal Council v Poynting* [2001] NSWCA 270 at [94]).

Accordingly, in the absence of explicit objectives for the standard to be varied, the proposed variation is properly assessed against the overarching aims and principles of the Housing SEPP, which provide the relevant policy context and intent. The objectives of Clause 4.4 within the RLEP have also been assessed on a first principles basis, insofar as relevant.

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5.1.1 State Environmental Planning Policy (Housing) 2021

5.1.1.1 Chapter 1, Section 3 – Principles of Policy

The proposed development is consistent with each principle of the Housing SEPP, as demonstrated below.

Table 1 Consistency with Housing SEPP Principles

Principle	Consistency
(a) Enabling the development of diverse housing types, including purpose-built rental housing.	The residential flat building component is essential to achieving an outcome that gives practical and substantive effect to Principle (a) of the Housing SEPP on a basis that is two-fold: **1. When considered independently, the residential flat building component will facilitate the delivery of diverse, affordable housing.** 15% of the GFA for the residential flat building component will enable the delivery of affordable *"purpose built rental housing"* for a minimum period of 15 years. The concept built form envelope for the residential flat building component is expressly capable of accommodating a diverse range of affordable rental apartments. The concept envelope readily enables a diverse mix of market-rate apartments capable of responding to identified demographic drivers and demand trends. While the final unit mix will be appropriately determined at detailed design stage, the concept envelope for the residential flat building component can accommodate a wide range of apartment typologies suited to singles, couples, families and downsizers. When the residential flat building component is considered in isolation, it directly advances Principle (a) of the Housing SEPP, which seeks to enable the *"development of diverse housing types, including purpose-built rental housing"*. **2. The residential flat building component is fundamental to the achievement of an integrated residential land use outcome across the broader site. Compliance with the standard to be varied would undermine this outcome.** While this Clause 4.6 Variation Request has a statutory relationship solely with the residential flat building component, it is noted that this land use component forms part of a broader integrated residential scheme that includes co-living housing. The overall concept scheme, inclusive of the residential flat building component (which accounts for the majority of the total GFA) and co-living housing component, will support an outcome that exemplifies housing diversity for infill development in Randwick. The residential flat building component is essential to the delivery of a complementary mix of affordable apartments, market-rate apartments and co-living accommodation. This gives practical effect to the statutory objectives for development in the R3 Zone to *"encourage housing affordability"* and *"provide for the housing needs of the community within a medium density residential environment"* under the RLEP. Overall, the proposal will exemplify the achievement of a diverse and integrated residential land use outcome in the context of well-located infill development. Artificially constraining the delivery of residential apartments would directly undermine this outcome and frustrate the strategic intent of the Housing SEPP. Importantly, strict compliance with the applicable FSR standard of 1.95:1 would materially constrain the delivery of residential apartments, including affordable housing. This report has demonstrated that the proposed FSR variation will not

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Principle	Consistency
	give rise to any unacceptable environmental impacts. Compliance would therefore result in a deficient planning outcome with respect to housing diversity, local affordability challenges, and Principle (a) of the Housing SEPP.
(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.*	15% of the GFA for the residential flat building component will enable the delivery of affordable rental housing for a minimum period of 15 years. The concept built form envelope for the residential flat building component is expressly capable of accommodating a diverse range of affordable rental apartments that respond to: **1. The needs of more vulnerable members of the community, which can be appropriately provided for within the concept built form envelope for the residential flat building component.** As noted above in relation to Principle (a), the concept built form envelope for the residential flat building component is expressly capable of accommodating a diverse range of affordable rental apartments that are tailored to the needs of different demographic cohorts. In this regard, it is noted that the final unit mix will be appropriately determined at detailed design stage and does not warrant further consideration at this stage. Specifically, the concept built form envelope for the residential flat building component is not restrictively narrow or unsuitably dimensioned. **2. The need for housing options that can accommodate very low-, low- and moderate-income households, which would be undermined if compliance with the standard to be varied was unduly enforced.** The accommodation of affordable apartments within the envelope for the residential flat building component responds directly to the intent of Principle (b). In this regard, it is noted that the proposed GFA nomination for affordable housing maximises the incentivised provision rate under Clause 16(2) of the Housing SEPP. If compliance with the standard to be varied was rigidly enforced, this would: - Cause an unnecessary reduction in building mass with little (if any) beneficial corresponding environmental outcome. As has been demonstrated, the proposed variation will not result in any unacceptable environmental impacts. - Result in a proportionate reduction to the amount of floorspace that is nominated for affordable rental housing within statutory parameters under Clause 16(2) of the Housing SEPP that have already been maximised. **3. The concept building envelope enables a meaningful contribution towards the stock of affordable rental housing in the LGA that will help give practical effect to the newly adopted *Affordable Rental Housing Strategy*.** On 9 December 2025, Council resolved to adopt the *Affordable Rental Housing Strategy* and reinforced its commitment towards increasing the proportion of social and/or affordable housing to 7.5% of all dwellings in the LGA. This adopted target supports the delivery of 1,494 social and/or affordable dwellings that will be required by 2036. The proposed nomination of affordable apartments for a minimum period of 15 years under this Concept DA (15% of the GFA of the residential flat building component) contributes more than proportionately towards the achievement of this target. The residential flat building component, which includes a generous offering of affordable housing, leverages the environmental context for the site and

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Principle	Consistency
	advances Principle (b) of the Housing SEPP. This outcome corresponds appropriately with Clause 15A of the Housing SEPP, which reinforces the following objective for infill affordable housing: *"The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households"*.
(c) *Ensuring new housing development provides residents with a reasonable level of amenity.*	Principle (c) fixates on the need for a *"reasonable level of amenity"*, which can be provided for within the concept built form envelope for the residential flat building component. The following is noted in this regard: **1. Building Separation Distances:** Approval is sought for a concept massing envelope, and this warrants early consideration of building separation distances with regard to the *NSW Apartment Design Guide* (ADG). As outlined within the Statement of Environmental Effects, the residential flat building component (both buildings) adopts separation distances that are consistent with the intended effect of the ADG. These separation distances will ultimately support an outcome for the site that minimises the visual prevalence of development and affords an appropriate level of privacy to adjoining properties. **2. Overshadowing:** As outlined within Table 2 of this report, the concept built form envelope for the residential flat building component will not contribute towards any unacceptable overshadowing due to: - The location of the site in relation to adjoining road reservations and the UNSW campus to the south. - The current extent of shadow footprints that are cast by existing development at the site and surrounding development. - The orientation of the site, which enables a fast-moving shadow footprint and a reasonably clear distinction between shadowing that is cast from the proposal during hours of the morning (predominantly to the west / south-west) and afternoon (predominantly to the east / south-east). Surrounding residential properties will retain adequate solar access during the middle part of the day, with the balance of additional shadow falling on public domain or institutional land that does not rely on sunlight for residential amenity. Further design consideration of other residential amenity matters will be a focal point when detailed design approval is sought to redevelop the site after this Concept DA is approved. This approach, which is consistent with standard industry practice where concept design approval(s) are first sought, will address any need for detailed design adjustments in due course.
(d) *Promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.*	The site is strategically located within the High Street corridor, which benefits from established and planned infrastructure, including frequent public transport services, proximity to UNSW, the Randwick Health and Education Precinct, Royal Randwick Racecourse, and the Randwick Junction town centre. The proposal, including the residential flat building component, reinforces the Housing SEPP objective of delivering higher-density rental housing within well-serviced urban locations where future residents can make efficient use of existing and planned infrastructure, reducing car reliance and supporting sustainable transport outcomes. The accommodation of affordable rental apartments within the site will contribute towards housing equity with respect to accommodation options that are close to

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Principle	Consistency
	public transport, services and amenities where lower-income households could otherwise be 'priced out'.
(e) *Minimising adverse climate and environmental impacts of new housing development.*	The accompanying SEE demonstrates that the proposed development will not result in any unacceptable adverse environmental impacts and is capable of achieving compliance with relevant environmental performance standards at the Detailed DA stage. The Concept DA envelope is capable of accommodating a wide range of sustainable design initiatives, including renewable energy generation (solar PV), water-sensitive urban design, high-performance building fabric, and energy-efficient services. This matter will be given appropriate consideration when detailed design approval is sought.
(f) *Reinforcing the importance of designing housing in a way that reflects and enhances its locality.*	The scale and density of the proposed residential flat building component align with the planned evolution of the High Street corridor as a mid-rise residential precinct supported by Council's strategic planning framework and State housing delivery objectives. Further reference should be made to extended discussion that has been provided in relation to this matter within **Table 2**. The site does not contribute to the significance of any heritage item or conservation area. The proposal is sufficiently separated from the Randwick Racecourse Conservation Area and surrounding heritage items such that no physical or visual impacts arise. The contemporary built form response is therefore appropriate and reflective of the evolving urban character of the High Street corridor. Further reference should be made to extended discussion that has been provided in relation to this matter within **Table 2**.
(g) *Supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use.*	The residential flat building component of this Concept DA does not preclude short-term rental accommodation where otherwise permissible under the relevant planning controls. The proposed residential flat building component does not undermine the Housing SEPP objective of supporting short-term rental accommodation as a complementary housing activity where this can be appropriately managed.
(h) *Mitigate loss of existing affordable housing.*	The proposal will not result in the loss of any existing dwellings that meet the definition of 'affordable housing' under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**). Further, by supporting the introduction of a new supply affordable rental housing, the development contributes positively to rental housing stock within the locality and actively mitigates housing affordability pressures, consistent with the intent of the Housing SEPP. This also reinforces the statutory objectives for the R3 Zone under the RLEP, which seek to *"encourage housing affordability"*.

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5.1.2 Randwick Local Environmental Plan 2012 – Objectives of Clause 4.4

The relevant principles and objectives of the Housing SEPP, as addressed within **Section 5.1.1.1**, prevail over the objectives of Clause 4.4 in the RLEP, which relate to a FSR standard that does not technically apply to this Concept DA. Notwithstanding, for completeness, the objectives of Clause 4.4 are addressed in the table below on a first principles basis. The assessment below demonstrates that the proposed development is consistent with each objective of Clause 4.4, insofar as relevant.

Table 2 Objectives of Clause 4.4 (RLEP)

Objective	Demonstration
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	The proposal is demonstrably consistent with, and reinforces, the desired future character of the locality, including the High Street corridor. In this context, appropriate regard is made to the following: • **The envisaged scale and density of future development in the local area and State-led policy reforms that promote the delivery of infill affordable housing.** The concept built form envelope for the residential flat building component advances Council's strategic planning intentions in the local area and supports the delivery of infill affordable housing within acceptable built form parameters, noting: - The adopted *Randwick Comprehensive Planning Proposal* (**Randwick Planning Proposal**) identifies the site within a key Housing Investigation Area (**HIA**) intended to accommodate substantial future housing growth in locations with high public transport accessibility and proximity to major employment, education, and health precincts. - Council previously identified the western part of the Arthur Street HIA as suitable for significant uplift, with an indicative built form of 8–9 storeys supported by a corresponding (deferred) FSR control of 3:1, which would still be subject to a 30% bonus under Clause 16(2) of the Housing SEPP for the residential flat building component. - The residential flat building component, which has an FSR of 3.1:1, is consistent with the anticipated density of development in the local area. Based on the deferred FSR control of 3.1:1, the application of a 30% bonus under Clause 16(2) of the Housing SEPP would (theoretically) increase the permissible FSR to 4.03:1. In this context, the current concept built form envelope for the residential flat building component (3.1:1) would be well within State-led built form parameters for infill affordable housing under the Housing SEPP. • **The broader national policy context for housing delivery.** This vision aligns with broader State and District planning objectives, including delivery targets under the *National Housing Accord 2022*, that encourage increased residential densities at suitable locations. • **The deferred consideration of built form controls within the Arthur Street HIA that would apply to the site, including a maximum permitted FSR of 3:1.** Although the site was deferred from the draft rezoning at the Extraordinary Council Meeting of 30 August 2022—following a request from UNSW—this deferral did not alter or diminish Council's underlying strategic intent for increased density along the High Street corridor. Rather, it deferred the application of updated planning controls (including the envisaged FSR control of 3:1) to this specific block pending further investigation. In light of the current State-led reform agenda that prioritises the delivery of diverse, affordable housing at accessible locations, Council's reconsideration of this 'deferred' built form profile is reasonable and should be supported in the isolated context of this Concept DA. Notwithstanding the deferred rezoning of the site, strategic planning material that has been prepared by Council to date clearly envisages a cohesive mid-rise urban

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Objective	Demonstration
	form along High Street that reflects the corridor's transport accessibility and proximity to UNSW, the Randwick Health and Education Precinct, Royal Randwick Racecourse and Randwick Junction. The residential flat building component presents an appropriate and proportionate built form response with a FSR of 3.1:1. This is consistent with the envisaged profile of development in the local area and would fall well within State-led built form parameters for LMR and infill affordable housing, which would continue to apply under Clause 16(2) of the Housing SEPP (subject to the provision of affordable housing). **Figure 4 Initially Proposed (Deferred) FSR Control (3:1)**  *Source: Randwick City Council*
(b) to ensure that buildings are well articulated and respond to environmental and energy needs,	The residential flat building component accommodates additional floor space (above what is currently permitted) within an envelope that is appropriately modulated, stepped and articulated to manage perceived scale and maintain a suitable relationship with adjoining properties. The Concept DA pathway ensures that detailed architectural resolution—such as refined articulation and modulation—can occur at the subsequent DA stage. The residential flat building component will be accommodated within a high-performing built form envelope that is capable of enabling sustainable design interventions through detailed design development. Specifically, this Concept DA does not limit the detailed design viability of sustainable design interventions (for instance, solar panels, water sensitive landscaping and energy efficient fixtures).
(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 site is located ~60 metres east of the Randwick Racecourse Conservation Area; however, the proposal does not interface with the conservation area and will not affect its identified heritage values. The *Draft Randwick Development Control Plan – B2 Heritage* confirms that the significance of the conservation area derives from attributes such as narrow lot subdivision patterns, consistent setbacks, traditional pitched and gabled roof forms, brick and stucco materials, terracotta and slate roofing, and federation-style verandah detailing. These characteristics relate specifically to the built form and landscape qualities that are internal to the racecourse precinct. Due to the location of the site, there is no potential for an outcome that alters subdivision patterns, modifies heritage fabric, or influences characteristic elements of the conservation area. Several heritage items within the racecourse grounds—including the Members' Stand/Official Stand and the Tramway Turnstile Building Complex—are located approximately 1 km to the north-west. These items are physically and visually separated from the site by intervening development and the expansive racecourse grounds, ensuring that the proposal does not impact their heritage significance. Likewise, *"Blenheim House and Outbuilding"*, situated approximately 230 metres to the east, is separated by existing development and public road corridors, with no direct interface that would give rise to adverse impacts.

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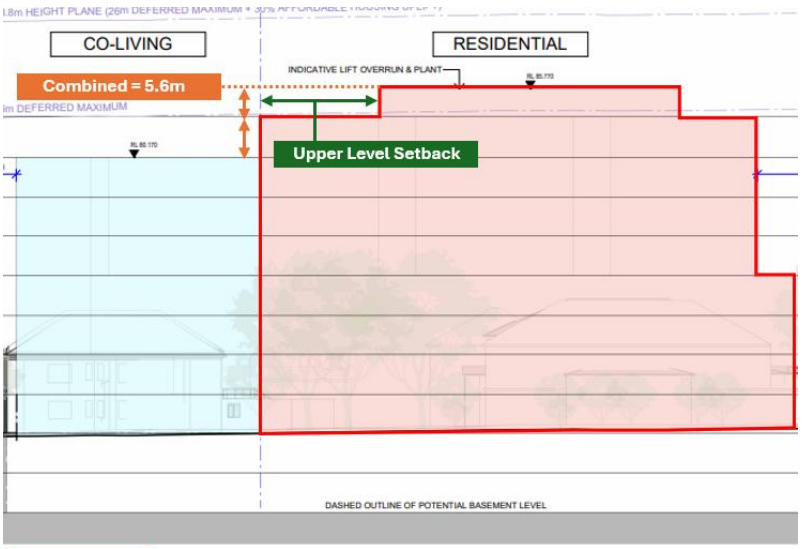
Objective	Demonstration
	The applicable DCP does not identify any contributory buildings within or adjoining the site, and there is no established heritage streetscape or local character that the proposal is required to reinforce or replicate. Given the substantial separation distances, the absence of any physical or visual relationship to identified heritage items, and the lack of any contribution by the site to the significance of the conservation area, the proposal is compatible with the surrounding heritage context and will not adversely affect any heritage item or conservation area. Further, it is noted in passing that recent State Significant Development (SSD) approvals, including the Royal Randwick Racecourse Hotel (SSD-38019507), Winx Stand (SSD-10285), and Stables Precinct (MP10_0098) have sufficiently managed the introduction of a contemporary built form profile within the Randwick Racecourse Conservation Area.
(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.	**Visual Bulk:** The proposed FSR variation will not result in adverse visual bulk impacts on adjoining or neighbouring properties. The eight-storey residential flat building component is in keeping with (and does not maximise) the 8–9 storey mid-rise form identified in the Randwick Planning Proposal for the Arthur Street HIA. The concept massing envelope for the residential flat building component incorporates stepping, modulation and appropriate separation distances to surrounding lower-scale residential areas, which effectively reduces perceived bulk and provides a suitable transition in scale. As this is a Concept DA, detailed articulation, façade treatments, materiality and other refinements that will further mitigate visual bulk will be resolved at the Detailed DA stage. <u>Visually Coherent Built Form Outcome:</u> While this Clause 4.6 Variation Request only relates to the residential flat building, it is necessary to consider the extent of the proposed variation within the context of the overall development. In this regard, the envelope for the residential flat building component enables an appropriate built form transition to the adjoining co-living envelope, noting: • When lift overruns / rooftop services are not considered, the current proposal achieves a height reduction of 3.4m between the largest residential flat building (RL 83.570m) and the adjoining (proposed) co-living component (RL 80.170m). • When the overrun / rooftop services for the residential flat building that adjoins the co-living component are considered, the cumulative height transition between the two land use components increases to 5.6m. However: - This height transition is stepped and is based on the maximum extent of the allowable height profile within the parameters of the proposed concept envelope (refer to **Figure 5** overleaf). - The lift overrun / building services for the residential flat building that adjoins the co-living component are recessed back from the primary façade alignment and will not be readily visible from ground level. Compliance with the standard to be varied is not required to enable a visually cohesive massing outcome because the FSR of the residential flat building component does not need to be reduced to provide for an amenable built form silhouette.

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Objective	Demonstration

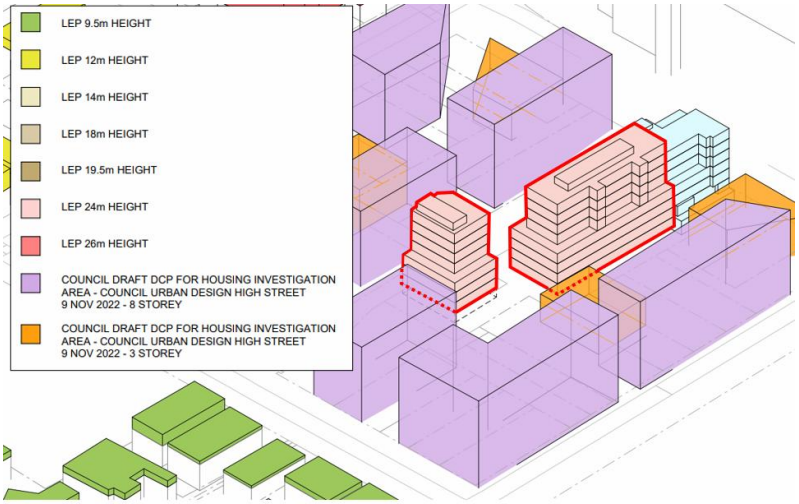
Figure 5 Built Form Transition with Co-Living Component (blue)



Residential Flat Building Component
Building envelope that adjoins the co-living component.

Source: WMK Architecture

Figure 6 Residential Flat Building Component and Envisaged Built Form Context

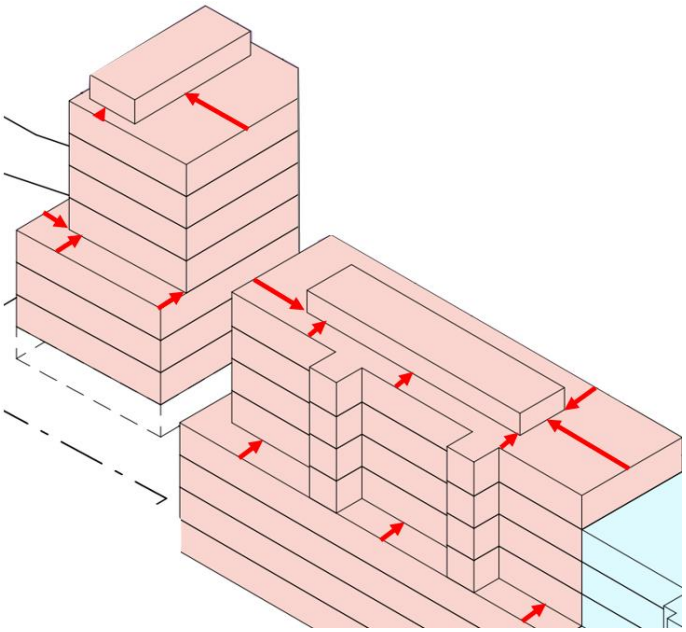


Residential Flat Building Component

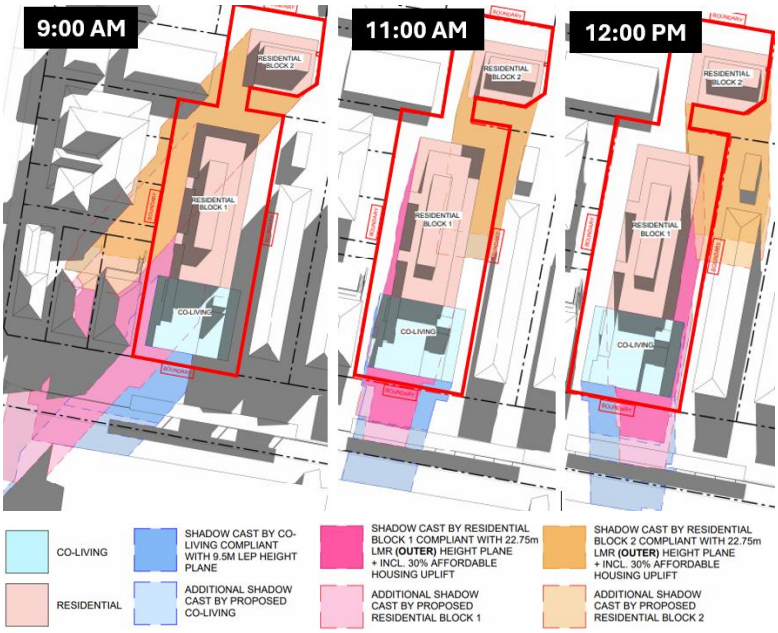
Source: WMK Architecture

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Objective	Demonstration
	Figure 7 Residential Flat Building Component – Built Form Recessions  *Source: WMK Architecture (annotated by Gyde)*
	Privacy: As outlined within the Statement of Environmental Effects, the residential flat building component is capable of achieving satisfactory building separation outcomes consistent with the intent of the ADG. The concept built form envelope does not enable a scale of development that would unreasonably reduce the level of privacy afforded to surrounding properties. Specifically, this Concept DA establishes only the building envelope, height and general massing. Architectural elements that directly influence privacy—such as the placement and orientation of windows, balconies and internal layouts—do not form part of this application and will be subject to detailed resolution in the subsequent Detailed DA. At that stage, any required mitigation measures, including privacy screening, louvres, high-sill windows and landscape treatments, can be incorporated to ensure overlooking is avoided or appropriately minimised.
	Overshadowing: The mid-winter shadow analysis demonstrates that the proposal will not create unreasonable overshadowing impacts. At 9am, shadowing falls predominantly to the south-west, affecting UNSW buildings and limited portions of residential properties to the immediate west. Some temporary shadowing of west-adjoining properties during morning hours is unavoidably influenced by the site's orientation and urban context. By 10am and 11am, incremental (off-site) shadow is largely confined to the High Street road reserve and UNSW campus. Additional overshadowing of the adjoining residential properties to east (predominantly at 12pm) is unavoidable and limited to

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Objective	Demonstration
	select areas of land during specific times of the day with respect to the orientation of the site and the local subdivision pattern. **Figure 8 Shadow Diagram Extracts: 9:00 AM to 12:00 PM (Winter Solstice)**  *Source: WMK Architecture* At 1pm and 2pm, shadows fall primarily within the subject site, select areas within properties to the immediate east (including unhabitable roof forms), the road corridor, and non-residential UNSW buildings. By 3pm, shadows shift further south-east. Due to fast shadow movement, no additional overshadowing to west-adjoining properties will occur during afternoon daylight hours. During the hours of 1pm – 3pm, the extent of overshadowing is reasonable to anticipate with respect to the envisaged built form profile for development at the site and the bonus provisions for LMR and infill affordable housing under the Housing SEPP. In this context, it is noted that all additional overshadowing is unavoidably influenced by the site's orientation and urban setting. *Refer to Figure 9 overleaf.*

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Objective	Demonstration
	Figure 9 Shadow Diagram Extracts: 1:00 PM to 3:00 PM (Winter Solstice)  *Source: WMK Architecture* It is noted that the orientation of the site and the associated shadow pattern enable a reasonably clear distinction between shadowing that is cast from the proposal during hours of the morning (predominantly to the west / south-west) and afternoon (predominantly to the east / south-east). In this regard, while some shadowing is unavoidable, the casted footprint is fast-moving and temporary. The proposed variation will not contribute towards unacceptable shadow-related impacts. Further reference should be made to the shadow diagrams that have been generated in relation to the concept built form envelope, which are contained within the Architectural Plans.
	Views: The proposal will not result in unacceptable view impacts. The site and its surrounds comprise primarily low- to mid-rise development, with residential buildings located to the west, north and east, and 6–7 storey institutional buildings within the UNSW campus to the south. These UNSW buildings are non-residential (not student accommodation) and do not depend on distant outlooks for amenity. Potential significant views in the locality are long-distance easterly views towards Coogee Beach (approximately 2 km away) and, to a lesser degree, distant city skyline views to the north-west (approximately 7 km away). The orientation of existing development, combined with the siting of the proposed building, ensures that these potential view corridors are not obstructed or materially diminished. The nearest residential property potentially affected, 42 High Street, has its principal distant outlook oriented to the north-west. As the proposal is located to the west, it does not intrude into this view corridor. It is also relevant that, if the Randwick Planning Proposal is implemented, the High Street precinct will undergo substantial uplift, accommodating significantly taller mid-rise buildings. In that context, some broader view change is inevitable as part of the precinct's future evolution. Notwithstanding this, the moderated height and scale of

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Objective	Demonstration
	the proposed development—sitting below the 8–9 storey typology envisaged for the corridor—ensure that any incremental view impacts are limited and reasonable.

5.2 The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.

This test is not relied upon. The underlying objective or purpose is relevant to the development.

5.3 The objective would be defeated or thwarted if compliance was required with the consequent that compliance is unreasonable.

This test is not relied upon.

5.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

This test is not relied upon.

5.5 The zoning of the land is unreasonable or inappropriate.

This test is not relied upon. The applicable land use zone (Zone R3 – Medium Density Residential) is reasonable and appropriate to the site. As outlined in **Section 6** (overleaf), the concept proposal will support the delivery of a suitable medium density development outcome for the site.

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6. Sufficient Environmental Planning Grounds

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ confirmed that the *"sufficient environmental planning grounds"* required under Clause 4.6 must relate specifically to the element of the development that contravenes the development standard, rather than the development as a whole.

Further, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J held that a consent authority may consider whether the environmental planning grounds relied upon are particular to the circumstances of the site and proposal.

Having regard to these principles, the environmental planning grounds justifying the proposed variation to the maximum permitted FSR control (1.95:1) that applies to the residential flat building component are:

- **Consistency with the envisaged land use intensity.**

  The residential flat building component is consistent with the density outcomes that are anticipated for the Arthur Street HIA in the ultimate term. The Randwick Planning Proposal identifies this precinct for mid-rise redevelopment supporting increased housing supply and urban renewal. Although this land block was deferred pending further assessment requested by UNSW, the underlying strategic intent of the Randwick Planning Proposal remains relevant because an intensified profile of residential development is reasonable to anticipate and foreseeable at this location.

  The residential flat building component is in keeping with (and does not exceed) the 8-9 storey built form profile that is envisaged by the Randwick Planning Proposal and Housing Investigation Area (HIA) chapter. It is further noted that this land use component is subject to a 30% FSR bonus under the Housing SEPP. If the envisaged (deferred) FSR control of 3:1 was applied in this context, the same bonus provisions that have been utilised under the Housing SEPP could lawfully permit an intensity of development (4.03:1) that substantially exceeds what is currently proposed for the residential flat building component (3.1:1).

  The residential flat building component supports an appropriate and proportionate built form response with a maximum FSR of 3.1:1. This is consistent with the envisaged profile of development in the local area and, subject to the deferred built form provisions for the western part of the Arthur Street HIA, would fall well within State-led built form parameters for LMR and infill affordable housing, which would continue to apply under Clause 16(2) of the Housing SEPP (subject to the accommodation of affordable housing).

- **Delivery of a 'medium density' outcome for the site.**

  The two leading objectives for the R3 Zone in the RLEP refer to the context of a *"medium density residential environment"*. NSW case law has consistently demonstrated that the term 'medium density' does not have universal legal definition. The proposal is consistent with the meaning and essential nature of a *"medium density residential environment"* in the context of the Arthur Street HIA, noting:

  - Despite the long-standing 'deferred' status of a potential 3:1 FSR control that was initially proposed by the Randwick Planning Proposal, the reporting and urban design studies that were prepared to support the final Planning Proposal refer to a built form profile of 8-9 stories in the context of an envisaged medium density character form, noting:
    - The *Arthur Street Housing Investigation Area Urban Design Report* (September 2022), which acknowledges that the *"Arthur Street HIA can provide for increased medium density residential apartment living"* (pg.23) with *"a maximum eight storey height limit"* (pg.24) along High Street. Under this deferred scenario, there would be provision for nine stories (subject to the delivery of affordable housing).
    - The built form envelope for the residential flat building component visually presents as an 8-storey form with select aspects that incorporate upper-level recessions. These massing recessions would reduce aspects of the concept envelope for the residential flat building component to 7 storeys when observed from street level.

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- An 8-9 storey (deferred) built form profile for development within and surrounding the site continued to be illustrated within the *Arthur Street Housing Investigation Area Urban Design Report* (September 2022) after the Extraordinary Council Meeting of 30 August 2022.
- If Council had no intention of amending the maximum permitted FSR control to 3:1 in the ultimate term, the documented use of language (*"deferred"*) and continued visualisation of a 'deferred' 8-9 storey built form (refer to **Figure 10** and **Figure 11**) profile for the western part of the Arthur Street HIA would not have been published after the Extraordinary Council Meeting of 30 August 2022. In this respect, the ongoing public articulation of a deferred built form outcome indicates that such an outcome has remained within the range of planning scenarios contemplated for the Arthur Street HIA, rather than being treated as spent or irrelevant. Ultimately, the concept envelope for the residential flat building component is consistent with Council's articulated vision for future development within the Arthur Street HIA.
- It is further noted that the 'deferred' status of an 8-9 storey built form and a baseline 3:1 FSR control for the western part of the Arthur Street HIA was confirmed in 2022, before key State-led policy reforms that are utilised by the residential flat building component came into effect. Consistent with established planning principles, the application of planning controls and strategic frameworks should have reasonable regard to the policy context. In light of the current State-led reform agenda for delivering diverse, affordable housing in accessible locations and delivery targets under the National Housing Accord, Council's reconsideration of this 'deferred' built form profile is reasonable and should be supported in the isolated context of this Concept DA.

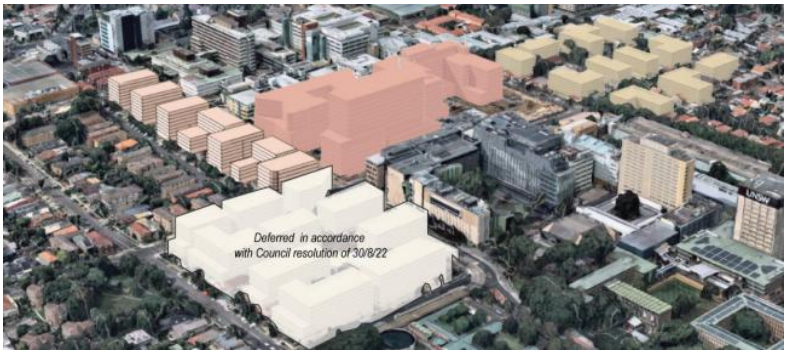


Figure 10 **Extract: *"Option 1 – 8 Storeys – View southeast – 3D modelling of building envelope scenarios"***

Source: Arthur Street Housing Investigation Area Urban Design Report (September 2022)

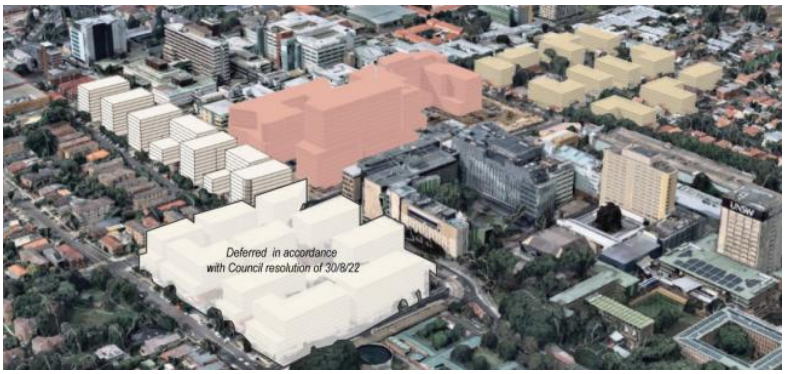


Figure 11 **Extract: *"Option 2 – 9 Storeys – View southeast – 3D modelling of building envelope scenarios"***

Source: Arthur Street Housing Investigation Area Urban Design Report (September 2022)

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- **Efficient and appropriate distribution of built form.**

  The envelope for residential flat building component is capable of accommodating development with a maximum FSR of 3.1:1. As outlined within **Table 2**, this does not compromise the achievement of an appropriately stepped built form transition towards the south-adjacent co-living envelope.

  Compliance with the standard to be varied is not required to enable a visually cohesive massing outcome because the FSR of the residential flat building component does not need to be reduced to provide for an amenable built form silhouette.

  The residential flat building component accommodates additional floor space within an envelope that is appropriately modulated, stepped and articulated to manage perceived scale and maintain a suitable relationship with adjoining properties.

  The Concept DA pathway ensures that detailed architectural resolution—such as refined articulation and modulation—can occur at the subsequent DA stage, enabling further optimisation of built form performance notwithstanding the FSR exceedance.

- **Acceptable solar access and overshadowing impacts.**

  The volume of building mass that is proposed outside of the permitted built form envelope will not result in any unacceptable additional overshadowing. As outlined within **Table 2**, the extent of overshadowing is reasonable to anticipate with respect to the envisaged built form profile for development at the site and the bonus provisions for LMR and infill affordable housing under the Housing SEPP.

  It is further noted that all additional overshadowing is unavoidably influenced by the site's orientation and urban context. It is noted that the orientation of the site and the associated shadow pattern enable a reasonably clear distinction between shadowing that is cast from the proposal during hours of the morning (predominantly to the west / south-west) and afternoon (predominantly to the east / south-east). In this regard, while some shadowing is unavoidable, the casted footprint is fast-moving and temporary.

- **No unacceptable impacts to existing views or high-amenity sightlines.**

  The bulk and scale of the concept built form envelope does not unreasonably encroach upon key view corridors towards Coogee Beach (east) or potential distant city skyline views (north-west). While future implementation of the Planning Proposal would introduce taller built forms along High Street, the siting of the residential flat building component ensures that any incremental view effects are limited and reasonable in a transitioning urban context.

- **No adverse impacts to historic values.**

  The uplift in floor area is sufficiently separated from Blenheim House and the Randwick Racecourse Conservation Area, ensuring that no impacts arise to their significance, curtilage or setting. It is noted that recent State Significant Development (**SSD**) approvals, including the Royal Randwick Racecourse Hotel (SSD-38019507), Winx Stand (SSD-10285), and Stables Precinct (MP10_0098) have sufficiently managed the introduction of a contemporary built form profile within the Randwick Racecourse Conservation Area.

- **Manageable privacy outcomes.**

  The proposed built form envelope for the residential flat building component, including floorspace that is attributed to the FSR variation, does not limit the potential for detailed design resolution with respect to privacy outcomes. Specifically, window placement, balcony orientation, screening and landscaping measures will be appropriately considered when detailed design approval is sought.

The proposed development advances the objects within Section 1.3 of the EP&A Act, notwithstanding the proposed FSR variation, including:

- **Objective (b) – Ecologically Sustainable Development:**

  The proposed FSR variation supports the accommodation of residential apartments (including affordable housing) in a capacity that is appropriate to the location of the site. This will leverage the proximity of high-frequency bus and light rail services that are located within walking distance. More broadly, it is noted that the FSR variation in relation to this Concept DA does not limit the detailed design viability of

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sustainable design interventions (for instance, solar panels, water sensitive landscaping and energy efficient fixtures).

- **Objective (c) – Orderly and Economic Use of Land:**

  The proposal enables higher-density housing on a strategically located, well-serviced site with immediate access to public transport, employment precincts and educational institutions. It accords with the mid-rise character that is reasonable to anticipate for the Arthur Street HIA and promotes the economic use of high-value land. A compliant design scheme would only limit viable residential floorspace at an accessible location within a Housing Investigation Area without any reasonable environmental benefits.

- **Objective (d) – Diverse, Affordable Housing:**

  15% of the GFA for the residential flat building component will enable the delivery of affordable *"purpose built rental housing"* for a minimum period of 15 years. This corresponds with statutory objectives for the R3 Zone under the RLEP, which seek to *"encourage housing affordability"* and accommodate a *"variety of housing types within a medium density residential environment"*.

  On 9 December 2025, Council resolved to adopt the *Affordable Rental Housing Strategy* and reinforced its commitment towards increasing the proportion of social and/or affordable housing to 7.5% of all dwellings in the LGA. In alignment with Objective (d) of the EP&A Act, this adopted target supports the delivery of 1,494 social and/or affordable dwellings that will be required by 2036. The proposed nomination of affordable apartments for a minimum period of 15 years under this Concept DA (15% of the GFA of the residential flat building component) contributes more than proportionately towards the achievement of this target.

  The concept built form envelope for the residential flat building component is expressly capable of accommodating a diverse range of affordable rental apartments. Specifically, the concept built form envelope for the residential flat building component is not restrictively narrow or unsuitably dimensioned. However, if compliance with the standard to be varied was strictly enforced, this would substantially limit the provision of affordable housing stock below what is currently proposed.

  In relation to the provision of market-rate apartments, the envelope is equally capable of responding to identified demographic drivers and demand trends. While the final unit mix will be appropriately determined at detailed design stage, the concept envelope for the residential flat building component can accommodate a wide range of apartment typologies suited to singles, couples, families and downsizers.

  As outlined within **Table 1**, the residential flat building component is fundamental to the achievement of an integrated residential land use outcome across the broader site. While this Clause 4.6 Variation Request has a statutory relationship solely with the residential flat building component, it forms an essential part of a broader scheme that will exemplify how housing diversity can be achieved at a site-specific scale. In this context, artificially constraining the delivery of residential apartments would undermine the strategic intent of the Housing SEPP.

- **Objective (e) – Environmental Protection:**

  The site contains no known threatened ecological values. The concept design scheme has made provision for deep-soil planting that supports biodiversity and improves urban environmental performance.

- **Objective (f) – Sustainable Management of Heritage Values:**

  As above, the proposal maintains adequate separation from heritage items, ensuring no adverse effect on their significance, views or curtilage.

- **Objective (g) – Good Design and Amenity:**

  The concept design scheme accommodates additional residential floorspace (above what is currently permitted) within a high-performing built form envelope that will:

  - Enable a stepped built form outcome that recedes inwards as the height of the building increases.
  - Not limit the potential for further detailed design resolution with respect to privacy, amenity and overall design quality.

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It is noted that the magnitude of the variation is not, of itself, determinative of whether the variation may be approved. As confirmed in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85], Clause 4.6 imposes no quantitative limit on the degree of departure from a numerical standard.

Clause 4.6 is a performance-based mechanism, and variations may be approved where, as here, sufficient environmental planning grounds exist.

7. Conclusion

This Clause 4.6 Variation Request has demonstrated that:

- Compliance with the maximum permitted FSR control (1.95:1) that applies to the residential flat building component under Clause 16(2) of the Housing SEPP would be unreasonable and unnecessary in the context of this Concept DA. The following is noted in this regard:
  - The proposal is consistent with the aims of the Housing SEPP, notwithstanding the variation.
  - The proposal is consistent with the objectives of Clause 4.4 in the RLEP on a first principles basis, notwithstanding the variation.
- There are sufficient environmental planning grounds to justify the proposed variation with respect to:
  - The envisaged land use intensity of development at the site, which is consistent with the concept envelope for the residential flat building component and Council's strategic planning intent for the Arthur Street HIA.
  - Alignment with the transitioning state of the local built form profile under State-led policy reforms, which intend to support the delivery of diverse, affordable housing options at accessible locations.
  - The long-standing 'deferred' status of the envisaged 3:1 FSR control for the western part of the High Street HIA, which was established before key State-led policy reforms came into effect. In light of the current State-led reform agenda for delivering diverse, affordable housing options in accessible locations and delivery targets under the National Housing Accord, Council's reconsideration of this 'deferred' built form profile is reasonable and should be supported in the isolated context of this Concept DA.
  - The efficient and appropriate distribution of built form volumes within the site, including in relation to the south-adjacent envelope for the co-living component.
  - The acceptable level of solar amenity that will continue to be afforded to surrounding residential properties by a fast-moving shadow footprint that is reasonable to anticipate with respect to:
    - The envisaged scale and density of development at the site.
    - The orientation of the site and configuration of adjoining allotments.
    - State-led policy reforms that prioritise the delivery of housing, including affordable housing, at locations that are within walking distance of rapid transit.
  - The character of the local area, including historic values that are associated with the Randwick Racecourse Conservation Area and Blenheim House.
  - The objects of the EP&A Act.

On the above basis, it is reasonable for Council to exercise the flexibility conferred by Clause 4.6 of the RLEP to support the variation.

Development Application Report No. D27/26

Subject: 60 St Marks Road, Randwick (DA/220/2026)

Executive Summary

Proposal:	Alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works
Ward:	North Ward
Applicant:	Ben Johnson - Benedict Design
Owner:	Richard O'Keefe & Emma Pritchard
Cost of works:	$172,200.00
Reason for referral:	The development involves demolition of a heritage item.

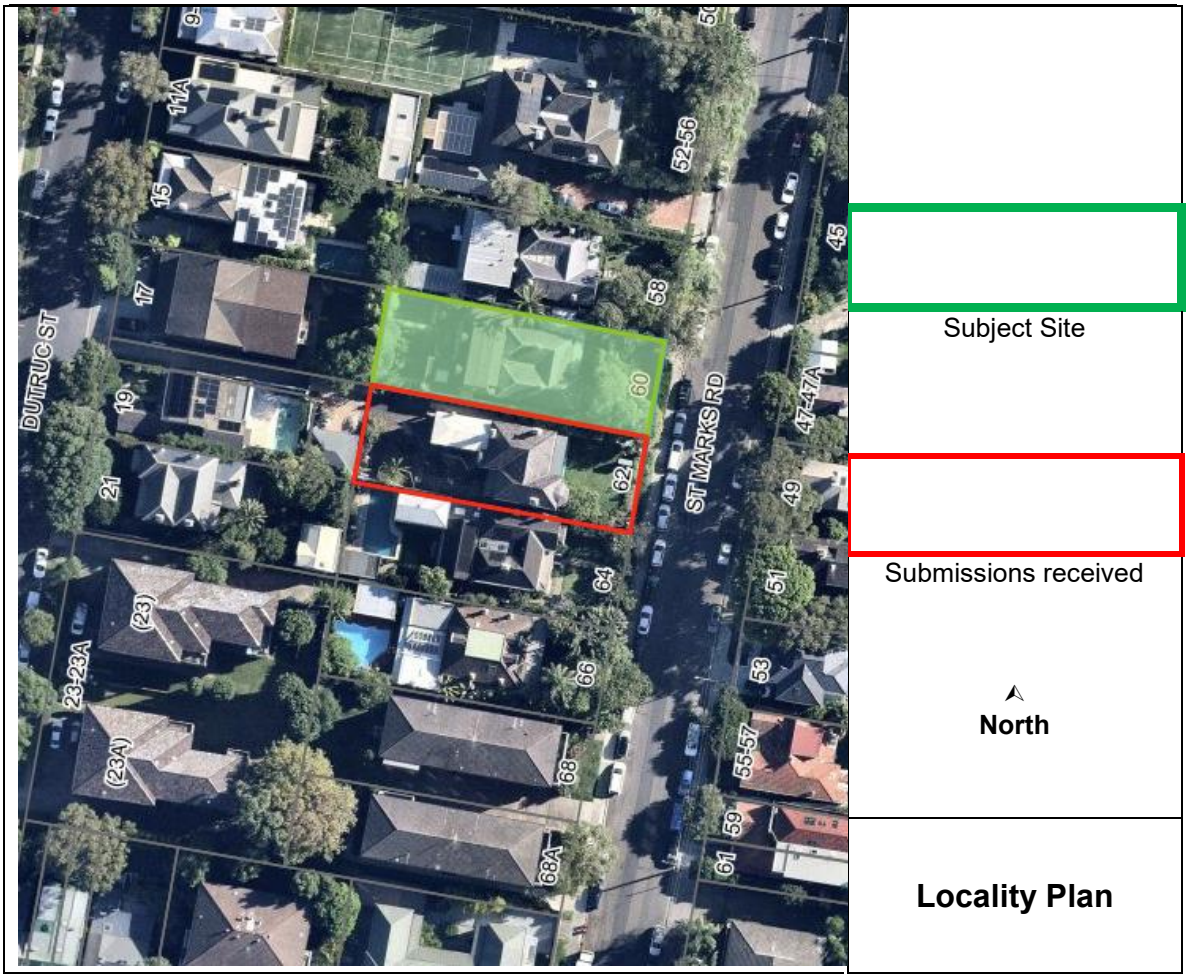
Recommendation

A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/220/2026 for alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works, at No. 60 St Marks Road Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1. RLPP Dev Consent Conditions - DA/220/2026 – 60 St Marks Road, RANDWICK NSW 2031 - DEV - Randwick City Council

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1. Executive summary

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

- The development involves partial demolition of a heritage item.

The proposal seeks development consent for Alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works (Heritage Item and Heritage Conservation Area).

The key issues associated with the proposal relate to rear setback and deep soil permeable surfaces.

The proposal is recommended for approval subject to non-standard conditions that require to amend the plans to reduce the size of the proposed rear family room addition from 23sqm to a maximum of 12sqm.

2. Site Description and Locality

The subject property is located at No. 60 St Marks Road, Randwick, and is legally identified as Lot 21 in DP 245089.

The site has a total area of 671.5m² and is regular in shape. Its boundaries are as follows:

- Frontage (east, to St Marks Road): 15.15m
- Northern side boundary: 44.38m
- Southern side boundary: 44.465m

- Rear boundary (west): 15.155 m

The site is currently occupied by a freestanding two-storey brick dwelling with a tiled roof.

The land falls gradually from the front to the rear, with levels ranging from RL 71.22 at the front to RL 69.27 at the rear, resulting in an overall slope of approximately 1.95m.

The subject site is a heritage-listed property, identified as part of the 'Group of Italianate Houses' (Item No. I442). It is also located within the St Marks Heritage Conservation Area and is in proximity to several other heritage items.

The immediate adjoining properties comprise:

- North: No. 58 St Marks Road – a two-storey brick dwelling with a tiled roof
- South: No. 62 St Marks Road – a two-storey brick dwelling with a tiled roof
- West: No. 17 Dutruc Street – a two-storey residential dwelling

The broader locality is characterised by predominantly low-density residential development, consisting mainly of one- to two-storey dwellings.

A site inspection was undertaken by Council's Assessing Officer on 16 April 2026. Photographs of the premises and surrounding context were captured at approximately 2:00pm.

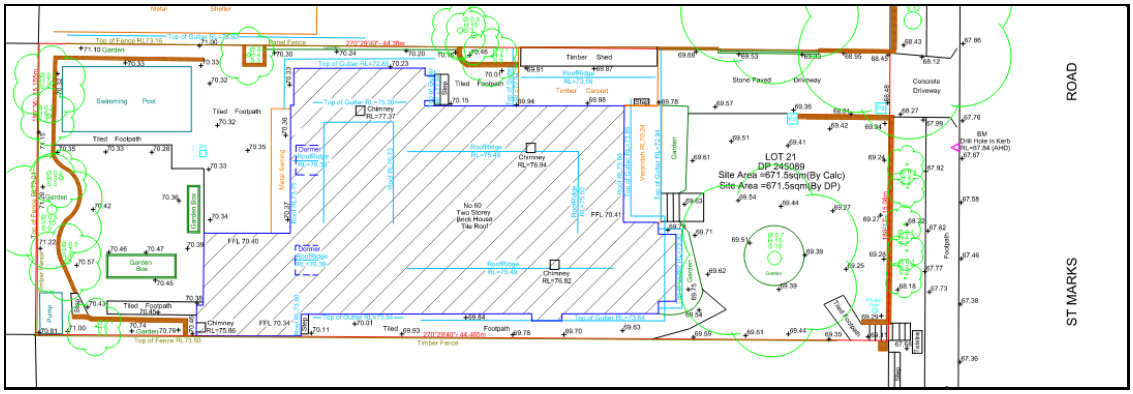


Figure 1: Extracted from the Survey Plan *(Source: NJB Surveying)*



Figure 2: View from the front yard to the existing dwelling house *(Source: Council's Assessing Officer)*



Figure 3: View from the north of courtyard to the south, location of proposed rear extension *(Source: Council's Assessing Officer)*

3. Relevant history

BA/1128/1975 was approved on 1 January 1975 for alterations.

BA/682/1976 was refused on 1 January 1976 for additions.

BA/639/1989 was approved on 29 June 1989 for alterations and additions to existing dwelling.

DA/110/2007 was approved on 28 February 2007 for To prune tree. Approve pruning of a tree - Ulmus parvifolia in front yard

DA/295/2010 was approved on 6 May 2010 for Development application for tree works. Approval granted to Remove 1 Eucalyptus, 1 Wattle, and to prune 1 Chimese Elm.

BC/37/2011 was approved on 28 April 2011 for Single storey brick and hardiplank dwelling with a slate and tiled roof incorporating a separate residence and an attached carport.

DA/416/2012 was approved on 10 July 2012 for Development application for tree works
Approval granted to remove 2 trees covered by TPO 1 x Melaleuca armillaris due to proximity to residence, 1 x larger Euc due to poor health (basal rot) hazard to stability.

DA/635/2012 was approved on 6 November 2012 for Construction of swimming pool to rear of existing dwelling with privacy screens adjacent to northern boundary, construction of retaining walls to rear of dwelling and new fence adjacent to existing carport (Heritage Item).

DA/822/2012 was approved on 19 June 2013 for Tree pruning. Approval granted to prune 1 x Large Chinese Elm in front of property.

DA/880/2014 was approved on 13 February 2015 for Alterations, ground and first floor additions to the existing dwelling house(Heritage item).

DA/880/2014/A was approved on 8 July 2016 for Section 96 modification of the approved development including change of material to driveway and new retaining wall. Original consent: Alterations, ground and first floor additions to the existing dwelling house (Heritage Item).

4. Proposal

The proposal seeks development consent for alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works (Heritage Item and Heritage Conservation Area).

The proposed development is illustrated in Figures 4 - 7 below.

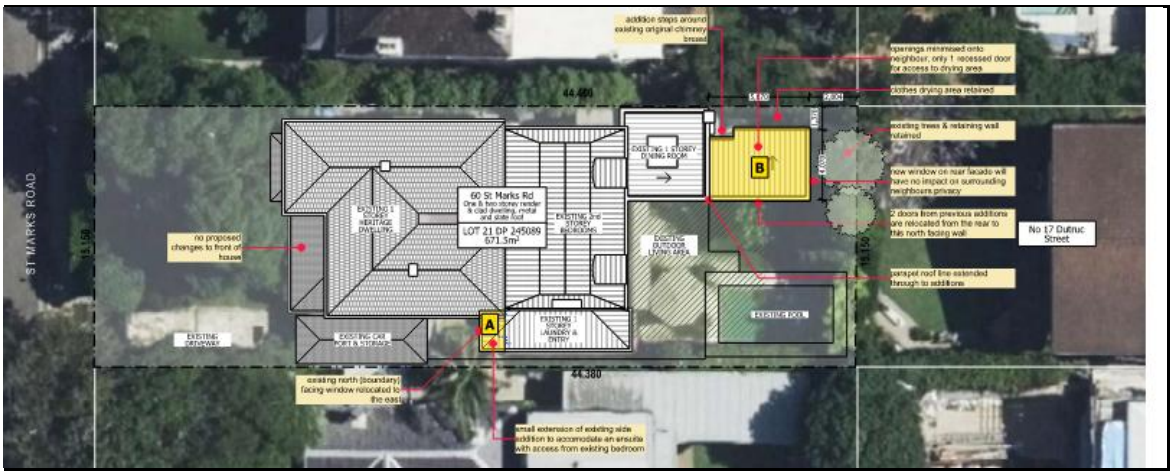


Figure 4: Extracted from Site & Roof Plan *(Source: Benedict Design)*

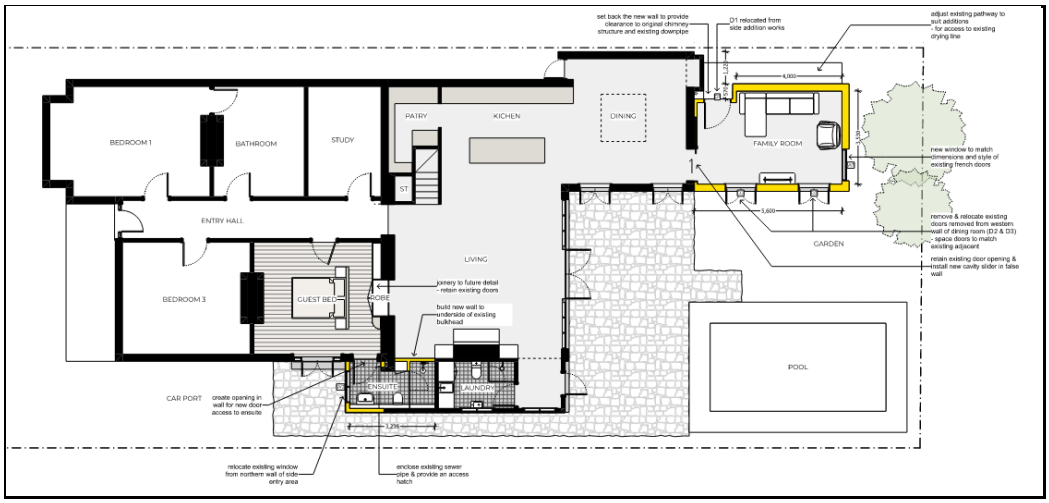


Figure 5: Extracted from Floor Plan *(Source: Benedict Design)*

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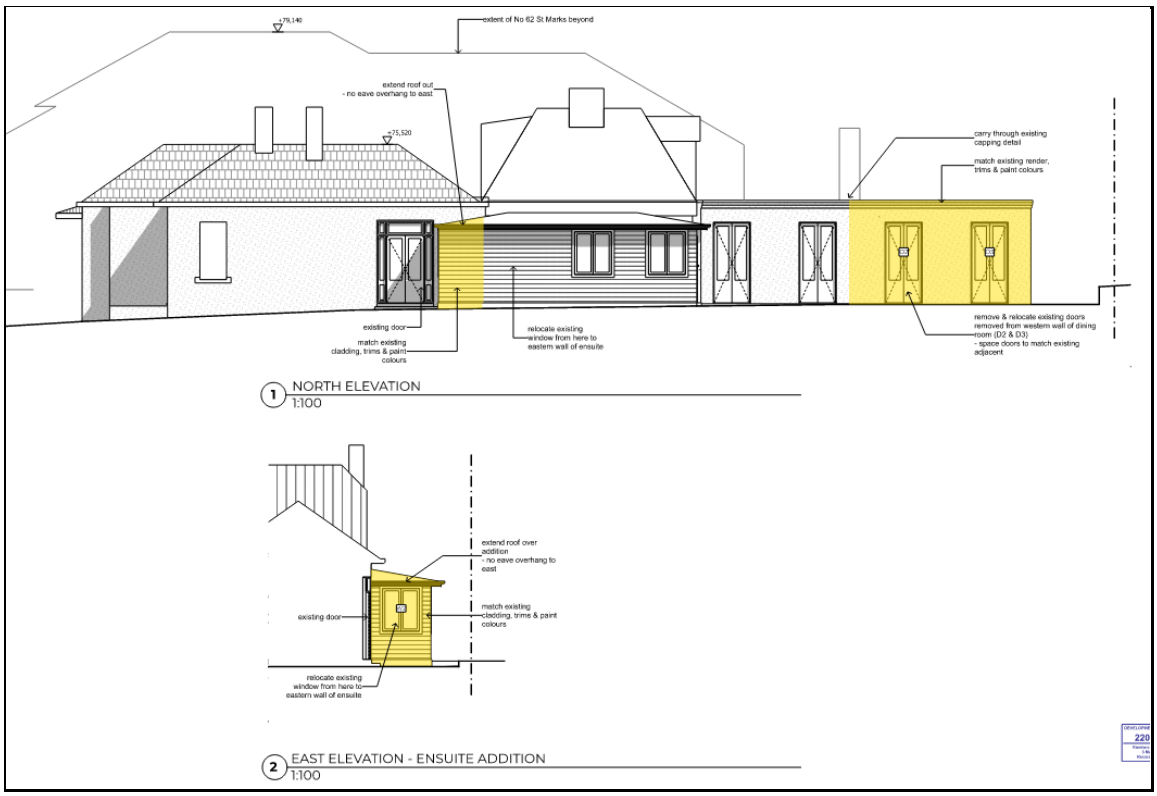


Figure 6: Extracted from North & East Elevations *(Source: Benedict Design)*



Figure 7: Extracted from South + West Elevations *(Source: Benedict Design)*

Specifically, the proposal includes:

Ground level

- Conversion of an existng un-used side entry into an ensuite bathroom, connecting to a used sitting room
- Conversion of the sitting room to a guest bedroom
- Relocation of the existing north faicing window to east (front of the property)
- Addition of a secodnary living area

- Relocation of two pairs of French doors from the west of dining room to the north of living addition (facing the yard)

First level
- No works proposed.

Ancillary
- Removal of portion of rear yard landscape to accommodate the rear addition of a family room

Context and setting

Surrounding development is predominantly residential including low density development.

Privacy, Views, Overshadowing, and Noise

The proposal involves alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works. The impact of privacy, views, overshadowing and noise are considered minor and acceptable.

Trees and Vegetation

Proposed landscape works will remove the portion of the existing landscape in the rear yard to accommodate the proposed rear addition of family room.

Access and Traffic

No impact on access or traffic.

Stormwater and Sewerage

The existing stormwater drainage and sewerage connections for the site are to be remained.

Contamination

The site is located in an area that historically has been used for residential development, and not uses that may otherwise create land contamination.

Cut and Fill

The proposal does not involve earthworks for any cut and fill. Minor earthworks for footing and 900mm away from the boundary.

Construction Management

The construction management will be conditioned.

Ongoing Waste Management

The dwelling waste management including Council issued waste and recycling bins, which are placed on the street for the weekly and fortnightly waste collection from council.

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:

- 62 St Marks Road Randwick

Issue	Comment
Rear setback non-compliance (primary objection) • DCP requires min 8m rear setback (25% or 8m, whichever less). • Proposal provides 2.8m setback	Refer to Discussion of key issues under Sub-Section 3.3.3 Rear Setbacks which addresses these concerns.
Reliance on inappropriate precedent • Applicant references nearby development (58 St Marks Rd). o Not comparable (older approval pre-RDCP 2023). o Should not justify current non-compliance.	Noted. The example used at 58 St Marks Road was approved under DA/832/2006, where the rear setback of the dwelling house is required 4.5m and the development was compliant with the requirement by then that time.
Local context / benchmark Adjacent DA/532/2025 achieved compliant rear setback.	There is no predominant rear setback at properties along the St Marks Road. Refer to Key issues for detailed assessment on rear setback.
Amenity impacts (visual and overshadowing)	Proposed rear addition is at ground level, which is not likely to be visually bulk. Shadow diagrams are not required if the proposed addition is at ground level. The proposed rear addition does not likely cause significant shadow impact given the proposed addition is at ground level, and the side setback is compliant with the required 1.2m.

5.1. Renotification

No request for information letter was sent and re-notification is not required.

6. Relevant Environment Planning Instruments

6.1. SEPP (Sustainable Buildings) 2022

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

6.2. SEPP (Biodiversity and Conservation) 2021

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

> *(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 Referrals section below). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

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

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 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 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)	0.6:1	0.4943:1	Yes
Cl 4.3: Building height (max)	9.5m	Proposed new addition has a height of maximum 3.35m	Yes

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 5.10 - Heritage conservation

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

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	**Comments**
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant residential character 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 issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of Key Issues

Rear Setback and Deep Soil Permeable Surfaces

The proposed rear addition does not comply with the minimum 8-metre rear setback requirement prescribed under Section 3.3 of Part C1 of the Randwick Development Control Plan (RDCP) 2023. While the existing dwelling maintains a compliant rear setback ranging from 8.318m to 13.322m, the proposed family room addition would reduce this to 2.8m, representing a significant encroachment into the rear yard (refer to Figures 8 and 9).

This degree of non-compliance is substantial and materially alters the spatial relationship between the dwelling and the rear boundary. The reduction in setback also results in a notable loss of deep soil permeable area, which is inconsistent with the environmental and amenity-based objectives of the DCP.

The rear setback control is not merely a numerical standard; it is a key planning mechanism intended to:

- Maintain adequate separation between buildings to avoid visual dominance and ensure a sense of openness
- Protect residential amenity, including solar access, natural ventilation, and privacy
- Preserve deep soil zones capable of supporting mature vegetation, improving stormwater infiltration, and contributing to urban cooling
- Ensure a balanced distribution of built form and open space across residential lots

By encroaching 5.2m into the required setback, the proposal compromises these intended outcomes, particularly in relation to deep soil provision and the retention of meaningful landscaping opportunities.

It is acknowledged that the rear setback pattern along St Marks Road is highly variable, as demonstrated in the aerial analysis (Figure 8). Rear setbacks in the immediate locality range from approximately 2.7m to 18.6m, reflecting diverse lot depths, historical development, and incremental alterations over time. This variation means that a rigidly uniform setback is not characteristic of the locality.

However, the presence of varied setbacks does not negate the importance of maintaining adequate deep soil areas or ensuring that new development does not exacerbate cumulative loss of permeable surfaces. The DCP objectives remain applicable regardless of contextual variation.

The proposed addition is single storey and located at ground level, which limits potential impacts relating to overshadowing, privacy, and visual bulk. In this respect, the proposal is unlikely to generate significant adverse amenity impacts for adjoining properties.

However, the primary concern relates to the extent of encroachment and the associated reduction in deep soil area. The proposal would:

- Reduce the capacity of the site to support meaningful landscaping
- Limit opportunities for stormwater infiltration, increasing reliance on engineered drainage
- Diminish the environmental performance of the site
- Contribute to incremental loss of permeable surfaces within the conservation area

These outcomes are inconsistent with the DCP's emphasis on sustainable site planning and the retention of green infrastructure.

The proposed 23 m² family room addition extends unnecessarily deep into the rear yard. A more modest extension would achieve a better balance between functional internal space and compliance with planning objectives.

A reduction to approximately 12m² would:

- Increase the rear setback to a minimum of 5.5m
- Restore approximately 11m² (1.64%) of deep soil area
- Reduce the degree of non-compliance

- Improve alignment with the DCP's environmental and amenity objectives
- Still provide a functional and usable extension to the dwelling

This represents a more proportionate and contextually appropriate design response.

Despite the setback concerns, the proposal has several positive attributes:

- The addition remains single storey, modest in scale, and clearly subordinate to the existing dwelling.
- It is not visible from the public domain, ensuring no adverse impact on the streetscape or the significance of the heritage item.
- The development maintains a floor space ratio well below the maximum permitted under the RLEP, demonstrating that the site is not being overdeveloped.
- The overall built form is consistent with the established character of the surrounding residential area.

These factors support the conclusion that the proposal is acceptable subject to modification.

Planning Conclusion

On balance, the proposal is capable of achieving an acceptable planning outcome provided the rear addition is reduced in size to address the excessive setback encroachment and loss of deep soil area. This modification would ensure the development better satisfies the objectives of the RDCP while maintaining the functional intent of the extension.



Figure 8: Extracted from the Nearmap – indicative measurements of rear setbacks along St Marks Road *(Source: Council's Assessing officer)*

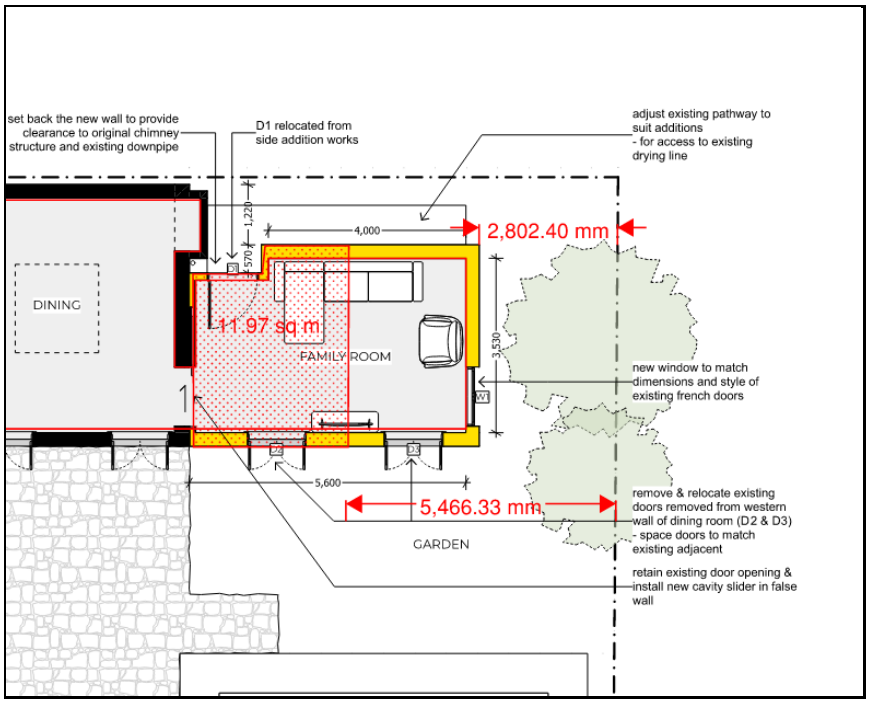


Figure 9: Indicative presentation of a preferred downsized family room addition *(Source: Council's Assessing officer)*

Recommended Condition

Amend the plans to reduce the size of the proposed rear family room addition from 23 m² to a maximum of 12 m².

The amended design must:
- Provide a minimum rear setback of 5.5 m
- Increase deep soil permeable surfaces by approximately 11 m²
- Improve consistency with the objectives of Section 3.3 of Part C1 of RDCP 2023

Condition Reason

To ensure the development provides adequate deep soil areas, maintains appropriate building separation, and aligns with the RDCP objectives relating to amenity, landscaping, environmental performance, and site permeability.

9. Conclusion

That the application to alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works (Heritage Item and Heritage Conservation Area) 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 RDCP 2013
- 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.

Heritage impacts

- The proposed works are mostly contained within the envelope of the existing building.

- External works do not add any significant bulk or detract from the heritage significance of the building or the streetscape
- The building to be demolished has significant structural damage.
- The building to be demolished is a non-contributory building in the conservation area and will be replaced by an appropriately designed infill building

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

The Site
Subject site is a heritage item of local significance.

Background
Approved DA/880/2014 - Alterations, ground and first floor additions to the existing dwelling house

Proposal
Alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works

Submission
D06038047 – Architectural Drawings
D06038044 - HIS

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

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

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

Comments
The proposed additions and alterations appear to be consistent with RDCP.
The proposal does not have any significant adverse impact on the fabric.

Recommendation
Supported with condition below:

While site work is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered:

a) the work in the area of the discovery must cease immediately;
b) the following must be notified
    i. for a relic – the Heritage Council; or
    ii. for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85.

Site work may recommence at a time confirmed in writing by:

a) for a relic – the Heritage Council; or
b) for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85.

1.2. Landscape

Landscape Comments
Inspection was undertaken on Wednesday 7th April 2026 through google street view and near map aerial photography, with photos of all vegetation found at D06038047 & D06082984.

While all works are to be held at rear of property, the only access to the site is from St Marks Road driveway entrance, near this entrance, a mature *Agonis flexuosa* (Weeping Peppermint) 12 metres high, in good condition and health, leaning eastwards, close to existing neighbouring frontage wall, protection will be applied against physical, mechanical injuries and deliveries and such.

Moving within existing driveway and northern side setback, through existing carport, some minor works to existing laundry, some vine species climbing along common boundary fence to the north, vine not in direct conflict with works, some care to be undertaken by Applicant to protect against physical injuries.

Moving to southwestern side setback, west of existing dining room, a proposed family room addition is to be constructed, measuring 5m long, 4m wide, which would see removal of small lower level growing insignificant shrubs and vegetables which can be removed at any time.

While measuring of Architectural Floor Plan, Dwg DA01.3 dated 16/2/2026, western common rear boundary was measured 2780mm to rear wall of proposed new family room, along the common boundary, there is an unidentified species, which is located immediately east of western common boundary fence, this species situated within a raised garden bed, that is approximately 500mm higher than natural ground level, near the location of proposed new family room extension.

Excavations are required for footings, associated with family room, however due to the elevated position of the raised garden bed, tree roots are not anticipated to be within the proposed footings, as precautionary measures, tree protection fencing will be applied to safeguard the species against any physical and mechanical damage.

These alterations do not increase site coverage by more than 10%, so the landscaping and tree canopy cover clauses in the C1 DCP 2023 will not apply.

Appendix 2: DCP Compliance Table

3.1 Part C1: Low Density Residential (2023)

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	**Site planning**	Site = 671.5sqm	
2.4	**Site coverage**		
	601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Proposed = 42.07% Existing 38.19% Alteration does not more than 10%.	Yes
2.5	**Deep soil permeable surfaces**		
	601 sqm or above = 45% i) Deep soil minimum width 900mm ii) Retain existing significant trees iii) Minimum 25% front setback area permeable surfaces *Dual occupancies and semi-detached dwellings: Deep soil area calculated on the overall site area and must be evenly distributed between the pair of dwellings.	Proposed = 33.57% Existing = 37% Net loss = 23.04sqm (3.43%) Minimum 25% front setback area permeable surfaces is achieved.	No, refer to Key issues
2.6	**Landscaping and tree canopy cover**		
	Minimum 25% canopy coverage Up to 300 sqm = 2 large trees 301 to 450 sqm = 3 large trees 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Proposed alteration does not more than 10%. Numerical control is not required. Minimum 25% front setback permeable surfaces is achieved.	NA
2.7	**Private open space (POS)**		
	Dwelling & Semi-Detached POS		
	601 sqm or above = 8m x 8m	Proposed > 8m x 8 m	Yes
3	**Building envelope**		
3.1	**Floor space ratio LEP 2012 = 0.6:1**	Proposed = 0.4943:1	Yes
3.2	**Building height**		
	Building height LEP 2012 = 9.5m	Proposed new addition has a height of maximum 3.35m	Yes
	i) Habitable space above 1st floor level must be integrated into roofline ii) Minimum ceiling height = 2.7m iii) Minimum floor height = 3.1m (except above 1st floor level) iv) Maximum 2 storey height at street frontage v) Alternative design which varies 2 storey street presentation may be accepted with regards to: – Topography – Site orientation – Lot configuration – Flooding – Lot dimensions – Impacts on visual amenity, solar access, privacy and views of adjoining properties.	Proposed ceiling height 2.8m	Yes

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<table>
<tr><th>DCP Clause</th><th>Controls</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td>3.3</td><td colspan="3">Setbacks</td></tr>
<tr><td>3.3.1</td><td>Front setbacks
i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment.
ii) Corner allotments: Secondary street frontage:
- 900mm for allotments with primary frontage width of less than 7m
- 1500mm for all other sites
– Should align with setbacks of adjoining dwellings
iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</td><td>Proposed no change.</td><td>NA</td></tr>
<tr><td>3.3.2</td><td>Side setbacks
<table><tr><th colspan="4">Minimum side setbacks</th></tr><tr><th>Existing primary frontage width</th><th>Building heights 0m to 4.5m</th><th>Building heights >4.5m to 7m</th><th>Building heights >7m</th></tr><tr><td>Less than 6m</td><td colspan="3">Merit assessment</td></tr><tr><td>6m to less than 9m</td><td>$0.9m$</td><td>$0.9m$</td><td>$0.9m + (building\ height - 7m)$</td></tr><tr><td>9m to less than 12m</td><td>$0.9m$</td><td>$0.9m + \frac{building\ height - 4.5m}{4}$</td><td>$1.5m + 2\,x\,(building\ height - 7m)$</td></tr><tr><td>12m and above</td><td>1.2m</td><td>$1.2m + \frac{building\ height - 4.5m}{4}$</td><td>$1.8m + 2\,x\,(building\ height - 7m)$</td></tr></table>Frontage width = 15.08m (12m and above)
Building height 0m to 4.5m = 1.2m</td><td>Proposed = 1.367m</td><td>Yes</td></tr>
<tr><td>3.3.3</td><td>Rear setbacks
i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.
ii) Provide greater than aforementioned or demonstrate not required, having regard to:
- Existing predominant rear setback line
- Reasonable view sharing (public and private)
- Protect the privacy and solar access
iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.
iv) For irregularly shaped lots = merit assessment on basis of:-
- Compatibility
- POS dimensions comply
- minimise solar access, privacy and view sharing impacts

*Definition: predominant rear setback is the average of adjacent dwellings on either side and is determined separately for each storey.

Refer to 6.3 and 7.4 for parking facilities and outbuildings.</td><td>Minimum = 8m
Existing = from 8.318m to 13.322m
Proposed family room addition = 2.8m</td><td>No, refer to key issues.</td></tr>
<tr><td>4</td><td colspan="3">Building design</td></tr>
<tr><td>4.1</td><td colspan="3">General</td></tr>
</table>

DCP Clause	Controls	Proposal	Compliance
	Respond specifically to the site characteristics and the surrounding natural and built context - • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design • balconies appropriately sized • Minimum bedroom sizes: 10sqm master bedroom (3m dimension), 9sqm bedroom (3m dimension).	The proposed addition is recessed from the existing building elevation and articulated with windows.	Yes
4.6	**Colours, Materials and Finishes**		
	i) Schedule of materials and finishes. ii) Finishing is durable and non-reflective and uses lighter colours. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) Recycle and re-use sandstone	The selected colours and materials (comprising timber painted to match existing mid-warm grey colour, bluestone steps, and ashlar render effect new masonry walls) are suitable.	Yes
4.7	**Earthworks**		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Subterranean spaces must not be habitable iv) Step retaining walls. v) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. vi) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vii) cut and fill for POS is terraced *where site has significant slope:* viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.	Minor earthworks for footing proposed.	Yes
5	**Amenity**		
5.1	**Solar access and overshadowing**		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	2 north-facing living room windows proposed in the proposed rear addition. No obstruction to the north and the 3 hours direct sunlight will be achieved.	Yes
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on	The proposed addition is located at ground level, where shadow	Yes

DCP Clause	Controls	Proposal	Compliance
	21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings on the neighbouring allotments.	diagram is not required. Proposed addition is compliant with the side setback – given the separation from the adjoining property at 62 St Marks Road, the shadow impact is considered minor.	
5.2	**Energy Efficiency and Natural Ventilation**		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) Living rooms contain windows and doors opening to outdoor areas *Note:* The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	Internal habitable spaces will achieve adequate natural lighting and ventilation.	Yes
5.3	**Visual Privacy**		
	Windows		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard	Relocation of the window at side addition for a proposed bathroom is considered to reduce the privacy impact. Proposed additional openings at rear addition will have no impact on adjoining	Yes

DCP Clause	Controls	Proposal	Compliance
	(minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	properties.	
5.4	**Acoustic Privacy**		
	i) Noise sources not located adjacent to adjoining dwellings bedroom windows *Attached dual occupancies* ii) Reduce noise transmission between dwellings by: - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer.	Proposed rear addition is enclosed and no increased noise source is generated.	Yes
5.5	**Safety and Security**		
	i) Dwelling main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 sqm) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The existing main entry at the front remained.	Yes
5.6	**View Sharing**		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA.	Noting the nature and siting of proposed works, the proposal is unlikely to result in any view sharing impacts to neighbouring properties.	Yes

Responsible officer: Mia Liu, Environmental Planning Officer

File Reference: DA/220/2026

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Development Consent Conditions – Dwelling Alterations and Additions

DA No:	DA/220/2026
Property:	60 St Marks Road, RANDWICK NSW 2031
Proposal:	Alterations and additions to existing dwelling house including changes to and extension of the ground floor layout to facilitate a new ensuite and family room, associated ancillary and landscaping works (Heritage Item and Heritage 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	*Drawn by*	*Dated*	*Received by Council*
Site & Roof Plan DA01.1 Rev. A	Benedict Design	16/02/2026	3 March 2026
Proposed Floor Plan DA01.3 Rev. A	Benedict Design	16/02/2026	3 March 2026
North + East Elevations DA02.1 Rev. A	Benedict Design	16/02/2026	3 March 2026
South + West Elevations DA02.2 Rev. A	Benedict Design	16/02/2026	3 March 2026
Materials & BASIX DA04.1 Rev. A	Benedict Design	16/02/2026	3 March 2026

BASIX Certificate No.	*Dated*	*Received by Council*
A1833277	16 February 2026	3 March 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. **Amendment of Plans & Documentation**
The approved plans and documents must be amended in accordance with the following requirements:

a) Amend the plans to reduce the size of the proposed rear family room addition from 23sqm to a maximum of 12sqm. The amended design must provide a minimum rear setback of 5.5m and increase the provision of deep soil permeable surfaces by approximately 11sqm, ensuring compliance with the deep soil requirements and better alignment with the objectives of Section 3.3 of Part C1 of RDCP 2023.

Amended plans must be submitted to Council and approved by the Certifier prior to

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	Condition
	the issue of any construction certificate. The above amendment/s must be reflected in the final construction plans and any documentation submitted as part of any construction certificate. Condition Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development. To ensure the development provides adequate deep soil areas, maintains appropriate building separation, and is consistent with the objectives of the RDCP relating to amenity, landscaping, and site permeability.
3.	**Heritage requirements** While site work is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered: a) the work in the area of the discovery must cease immediately; b) the following must be notified i. for a relic – the Heritage Council; or ii. for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85. Site work may recommence at a time confirmed in writing by: a) for a relic – the Heritage Council; or b) for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85. Condition Reason: To ensure that any unexpected discovery of relics or Aboriginal objects during site works is appropriately managed and protected in accordance with the requirements of the National Parks and Wildlife Act 1974, and to prevent potential harm to items of environmental heritage significance.

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 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 the Certifier prior to issuing a construction certificate for the development. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

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	Condition
6.	**Section 7.12 Development Contributions** In accordance with Council's Randwick City Development Contributions Plan 2024, effective from 31 July 2024, based on the development cost of $172,200.00 the following applicable monetary levy must be paid to Council: $861.00. The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment. To calculate the indexed levy, the following formula must be used: **IDC = ODC x CP2/CP1** Where: **IDC** = the indexed development cost **ODC** = the original development cost determined by the Council **CP2** = the Consumer Price Index, All Groups, Sydney, as published by the 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.	**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*: • $600.00 - 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.
8.	**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,

	Condition
	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.
9.	**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.
10.	**Structural Adequacy** Certificate of Adequacy supplied by a professional engineer shall be submitted to the Certifier (and the Council, if the Council is not the Certifier), certifying the structural adequacy of the existing structure to support the proposed development. Condition Reason: To ensure the structural integrity of the building is maintained.
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

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	Condition
	Assessment Regulation 2021.
12.	**Stormwater Drainage** A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:- a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2); b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit; c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises; d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises; e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works. Condition Reason: To control and manage stormwater run-off.
13.	**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. Condition Reason: To ensure adjoining land is adequately supported.
14.	**Excavation, Earthworks and Support of Adjoining Land** A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the Principal Certifier: • when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land; • when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling); • when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and • as otherwise may be required by the Certifier for the development. The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the Principal Certifier. Condition Reason: To ensure adjoining land is adequately supported.
15.	**Protection of tree within street**

Condition

To ensure retention of mature *Agonis flexuosa* (Weeping Peppermint) 12 metres high, good vigour, good health, located north of St Marks Road driveway entrance, the following measures are to be undertaken:

a) All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk, canopy SRZ, TPZ to be clearly and accurately shown on all plans in relation to the proposed works.

b) This street tree must be physically protected by installing an evenly spaced star pickets at a setback of 1000 mm of its trunk, matching up with the kerb to its east, to which, safety para-webbing shall then be permanently attached to completely enclose the tree for the duration of works.

c) This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".**

d) If additional trunk or branch protection is required, this can be provided by wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall then be placed around their circumference and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.

e) Where major roots with a diameter of 50mm or more are encountered and Council's officer determines they must be retained, a cantilevered, pier and beam style footing must be used for these areas.

f) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then being backfilled with clean site soil as soon as practically possible.

g) Where roots are encountered which are in direct conflict with the approved works, they may be cut cleanly using only hand-held tools, not machinery, with the affected area to then be backfilled with clean site soil as soon as practically possible.

h) Ground level within the TPZ must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil.

i) The Applicant is not authorised to perform any other works to this public tree and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning or similar be necessary. If approval is given, it can only be performed by Council, wholly at the Applicants cost,

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Condition

GIVING UP TO SIX WEEKS NOTICE, with payment to be received prior to pruning or any Occupation Certificate.

j) Within the TPZ there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.

k) The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate

A refundable deposit in the form of cash, credit card, cheque OR bank guarantee for an amount of **$2000.00** must be paid into **Tree Preservation Deposit** via Council's Customer Service Centre, **prior to a Construction Certificate being issued for the development** to ensure compliance with the conditions listed in this consent, and preservation of the tree.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's *'Security Deposit Refund Application Form'* and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6633)

Any contravention of Council's conditions relating to the tree/s at any time during the course of the works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 4.17 (6) of the Environmental Planning and Assessment Act 1979.

Condition Reason: Protection and/or maintenance of existing environment public infrastructure, community assets and significant trees.

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.

16. **Protection of tree within property**
To ensure retention of rear unidentified tree species, located near rear western common boundary fence, centrally adjacent proposed new Family Room addition, the following measures are to be undertaken:

a) All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk, canopy SRZ, TPZ to be clearly and accurately shown on all plans in relation to the proposed works.

b) This tree must be physically protected by installing an evenly spaced star pickets at a setback of 1500mm of its trunk, matching up with the rear boundary fence, to which, safety tape/para-webbing or similar shall then be permanently attached to completely enclose the tree for the duration of works.

c) This fencing shall be installed prior to the commencement of demolition and

Condition
construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".**
d) If additional trunk or branch protection is required, this can be provided by wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall then be placed around their circumference and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk
e) Where major roots with a diameter of 50mm or more are encountered and Council's officer determines they must be retained, a cantilevered, pier and beam style footing must be used for these areas.
f) The Construction Certificate plans must acknowledge that the site inspection may result in the need to alter the design away from a traditional strip footing, with a suitably qualified engineer to have an alternative design approved by the Principal Certifier, prior to installing the footings
g) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible
h) Where roots are encountered which are in direct conflict with the approved works, they may be cut cleanly using only hand-held tools, not machinery, with the affected area to then be backfilled with clean site soil as soon as practically possible.
i) Ground levels within the TPZ must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil
j) Within the TPZ there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
k) The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.
Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

BEFORE BUILDING WORK COMMENCES

	Condition
17.	**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

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plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council must be notified accordingly (in writing); and

d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and

e) at least two days' notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works.

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

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

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

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

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

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

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

	Condition
	The dilapidation report must be submitted to the Principal Certifier, the Council and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work). Condition Reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.
20.	**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.
21.	**Construction Noise & Vibration Management Plan** Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies. A Construction Noise & Vibration Management Plan Guideline must be prepared by a suitably qualified person in accordance with the Environment Protection Authority Construction Noise and the Assessing Vibration: A Technical Guideline and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works. Condition Reason: To protect the amenity of the neighbourhood during construction.
22.	**Public Utilities** A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.

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

23. **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

24. **Site Signage**
It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
a) showing the name, address and telephone number of the principal certifier for the work, and
b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
c) stating that unauthorised entry to the work site is prohibited.

The sign must be—
a) maintained while the building work is being carried out, and
b) removed when the work has been completed.

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

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

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	• 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	• Monday to Friday - 8.00am to 3.00pm • (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted

	Condition
	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.
26.	**Public Safety & Site Management** Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times: a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident. g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time. *If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.* h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. i) Noise and vibration from the works are to be minimised and mitigated by

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	Condition
	implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines. 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. 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. Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
27.	**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.
28.	**Tree Management** Due to their small size and insignificance, no objections are raised to removing all lower level vegetation, within the footprint of rear Family Room addition. Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
29.	**Occupation Certificate Requirements** An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. Condition Reason: Statutory requirement. To ensure the site is authorised for occupation.
30.	**BASIX Requirements** In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled. Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate. Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.
31.	**Council's Infrastructure, Vehicular Crossings and Street Verge**

	Condition
	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 are completed in accordance with Council's requirements and an appropriate quality for new public infrastructure.
32.	**Landscaping Certification** The Principal Certifier must ensure that landscaping at this site has been installed in accordance with the approved plans and any relevant conditions of consent, prior to any Occupation Certificate, with the owner/s to then maintain it in a healthy and vigorous state until maturity. Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of development. Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.

OCCUPATION AND ONGOING USE

	Condition
33.	**Use of Premises** The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes. Condition Reason: To ensure the development is used for its intended purpose.
34.	**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.
35.	**Plant & Equipment** Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

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Condition
Condition Reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

	Condition
36.	**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. 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. The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos). 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. Condition Reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

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

Development Application Report No. D28/26

Subject: 21 Forsyth Street, Kingsford (DA/1150/2025/REV)

Executive Summary

Proposal:	Section 8.2 Review of determination regarding DA/1150/2025 for retention of unauthorised works to permit the use of an 8 room co-living development, including partial demolition of internal and external walls, construction of internal and external walls to create new rooms and retention of existing structures onsite
Ward:	West Ward
Applicant:	Ms A Hu
Owner:	Mr W M Kwan
Cost of works:	$27,500.00
Reason for referral:	The development contravenes the development standard for Lot size, communal open space, landscaped area and car parking by more than 10%.

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1150/2025/REV for Section 8.2 Review of determination regarding DA/1150/2025 for retention of unauthorised works to permit the use of an 8-room co-living development, including partial demolition of internal and external walls, construction of internal and external walls to create new rooms and retention of existing structures onsite at No. 21 Forsyth Street, Kingsford 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 Zone in that it does not complement the desired future built form outcomes of the locality, does not have a high amenity and protect the amenity of residents, is inconsistent with the Council's strategic planning for residential development in the area, and does not facilitate a high standard of urban design.

2. Pursuant to Clause 4.6 of Randwick Local Environmental Plan 2012, the Applicant has failed to demonstrate that compliance with the minimum lot size, communal open space, landscaped area and car parking development standards under State Environmental Planning Policy (Housing) 2021 is unreasonable or unnecessary in the circumstances of the case, and has failed to demonstrate that there are sufficient environmental planning grounds to justify contravention of those development standards.

3. Pursuant to Clause 68(2)(c) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required communal living area for co-living housing. The nominated communal living areas include circulation space and, once excluded, do not provide the minimum functional communal living area required to support the intensity of the proposed co-living use, resulting in substandard residential amenity.

4. Pursuant to Clause 68(2)(d) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required communal open space and the submitted Clause 4.6 request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary, nor that sufficient environmental planning grounds exist to justify the non-compliance.

5. Pursuant to Clause 69(1)(b)(ii) of State Environmental Planning Policy (Housing) 2021, the suitability of the site for the proposed co-living housing has not been adequately demonstrated,

as the site does not comply with the minimum lot size development standard. The submitted Clause 4.6 request is not supported.

6. Pursuant to Clause 68(2)(f) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required landscaped area for co-living housing. The submitted Clause 4.6 request is not supported, and the shortfall undermines residential amenity and environmental performance outcomes.

7. Pursuant to Clause 68(2)(e) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required on-site car parking for co-living housing. The submitted Clause 4.6 request is not supported, and Council's Development Engineering officers have advised that the parking shortfall would place unacceptable strain on the surrounding on-street parking network.

8. Pursuant to Clause 69(1)(d) and (f) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide an appropriate and functional manager workspace or adequate communal kitchen facilities commensurate with the intensity of the co-living use, resulting in unacceptable internal amenity outcomes.

9. Pursuant to Clause 69(2)(c) of State Environmental Planning Policy (Housing) 2021, the proposal has not demonstrated that at least one communal living area will receive a minimum of three (3) hours of direct solar access between 9 am and 3 pm at mid-winter. No supporting solar access analysis has been provided, and surrounding development may limit solar access in practice.

10. The proposal includes unauthorised building works that do not comply with the requirements of the National Construction Code and Building Code of Australia, including deficiencies relating to stair safety, handrails, visibility of glazing and natural light to habitable rooms. The extent of these non-compliances results in unacceptable safety and amenity outcomes for occupants.

11. A full and robust assessment of the proposal cannot be undertaken as insufficient information has been submitted regarding acoustic impacts and their management. The absence of an acoustic report and deficiencies in the Plan of Management result in unacceptable uncertainty regarding internal and external noise impacts on resident and neighbourhood amenity.

12. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the likely impacts of the development, as detailed in this report, are considered unacceptable having regard to cumulative amenity, environmental health and operational impacts.

13. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development, as the application has not demonstrated that the site can accommodate the proposed intensity of co-living housing without resulting in adverse impacts or compromising the provision of adequate amenity for future occupants.

14. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest as it fails to promote the objectives of the zone and would result in unacceptable environmental and social impacts arising from the intensity of the co-living use and the unresolved amenity and safety concerns. The proposal would also establish an undesirable precedent by facilitating inappropriate development that does not comply with key provisions and considerations under relevant State Government and Council planning policies..

Attachment/s:

Nil



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for lot size, communal open space, landscaped area and car parking by more than 10%.

The Section 8.2 review of determination regarding DA/1150/2025 seeks consent for retention of unauthorised works to permit the use of an 8-room co-living development, including partial demolition of internal and external walls, construction of internal and external walls to create new rooms and retention of existing structures onsite.

The key issues associated with the proposal relate to ongoing non-compliance with key development standards for co-living housing under the State Environmental Planning Policy (Housing) 2021, including inadequate communal living area provision, insufficient communal open space, landscaped area and car parking, unsupported Clause 4.6 variation requests, unresolved building compliance and environmental health matters, and the cumulative impact of these issues on residential amenity and site suitability. The proposal is therefore recommended for refusal on this basis.

2. Site Description and Locality

The subject site is known as 21 Forsyth Street, Kingsford and is legally described as Lot 1 in DP 34717. The site is 335.1m^2, is regular in shape and has a 10.06m frontage to Forsyth Street to the West. The site is a corner allotment and has a secondary street frontage to Middle Street to the south (being 33.53m in length). The Northern side boundary is 33.53m and the eastern rear boundary is 10.06m (refer Figure 1 & 2).

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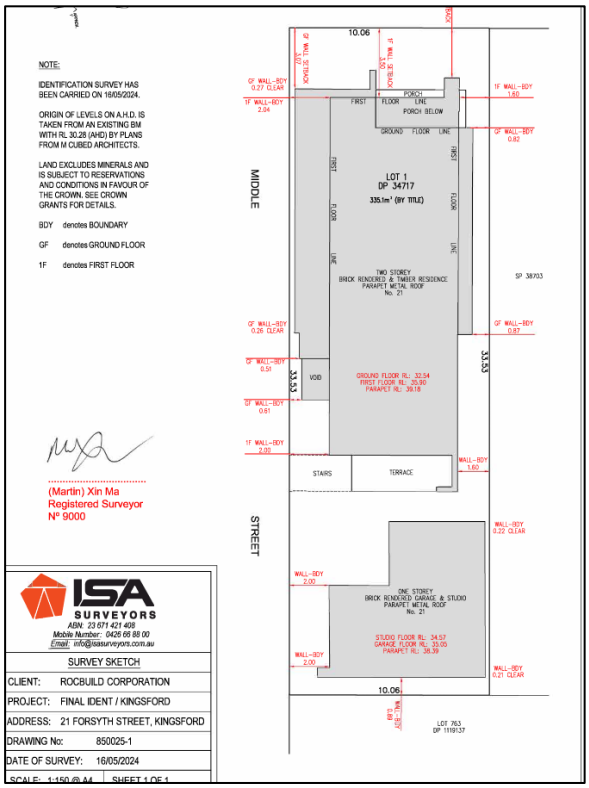


Figure 1: Survey Plan (Source: ISA Surveyors)



Figure 2: Aerial Imagery of 21 Forsyth Street (Source: NearMap 2026)

The site is mostly flat across the Forsyth Street (western) frontage. The site significantly slopes up from the western frontage to the eastern rear boundary. From RL 31.04 to RL 35.73, being an increase of 4.69m.

The site contains a two-storey brick rendered and timber residence and an outbuilding with a garage and a bedroom with an ensuite proposed to be used as a co-living room (refer Figures 3 & 4)



Figure 3: 21 Forsyth Street, as shown from corner of Forsyth and Middle Street (Source: Council)



Figure 4: Existing outbuilding as viewed from Middle Street (Source: Council)

Surrounding development is primarily residential in nature and is characterised by a mix of detached dwellings and residential flat buildings. Development varies from one (1) to four (4) storeys in height (refer Figures 5 & 6).



Figure 5: Residential flat building at 17-19 Forsyth Street to north of the site (*Source: Council*)



Figure 6: Detached dwellings at 14 & 16 Forsyth Street to the west of the site (*Source: Council*)

3. Relevant history

DA/352/2020 sought approval for demolition of existing structures, construction of a new boarding house containing thirty-two (32) rooms (16 x single rooms; 16 x double rooms (including an onsite manager's room)), and basement car parking for seventeen (17) vehicles, seven (7) motorcycles and seven (7) bicycles under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. This was refused on 31 October 2022.

CDC/315/2022 for alterations and additions to existing dwelling and construction of proposed outbuilding. AC CDC No.22622/01. This was approved on 16 September 2022.

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

- The development contravenes the development standard for Lot size, communal living areas and communal open space by more than 10%.

This proposal sought development consent for the *retention of unauthorised works to permit the use of an 11 room co-living development, including partial demolition and construction to create new rooms and three ensuite bathrooms.*

Council's compliance team had investigated the premises, after receiving a complaint from the community. On 03 April 2025, a Notice of Intention was issued to the property owner, noting that:

> *A recent inspection of the subject premises has been carried out by a Council officer which has identified that the premises are being used for the purposes of a boarding house without obtaining the prior development consent from Council.*

The works were said to include:

- *Installation of partition walls to the ground floor dining/living space to create a bedroom with ensuite;*
- *Creation of additional bedroom and ensuite accessed from the existing ground floor dining room and situated beneath the first-floor rumpus room;*
- *Installation of partition walls to the first-floor rumpus room to create a bedroom with ensuite;*
- *Installation of partition walls in the garage to create a bathroom and conversion of the garage to a bedroom.*

On 11 July 2025, Council issued an Order, requiring:

1. *stop using the subject premises for the purposes of a boarding house including reversion of the garage to its intended use, and*

2. *demolish and remove the unauthorised partition walls to the ground floor dining/living space; demolish or remove the unauthorised ensuite in the additional bedroom accessed from the existing ground floor dining room and cease using the space as a bedroom; demolish or remove the unauthorised partition walls to the first-floor rumpus room; and demolish or remove the unauthorised partition walls and bathroom in the garage.*

The Applicant then proceeded to lodge the original Development Application, seeking approval for the unauthorised works.

The key issues associated with the proposal related to:

- Non-compliance with Lot Size, Communal Living Areas and Communal Open Space Development Standards. The Clause 4.6 variation requests were inadequate and were not supported by Council.

- The proposal did not provide Clause 4.6 variation requests for:
  - Non-compliant Car Parking (inaccurate parking assessment, quoting the incorrect number of rooms).
  - Non-compliant Landscaping.

- No manager workspace/room provided in accordance with Section 69(1)(d).

- Extensive BCA/NCC non-compliances, including unsafe stairways, lack of compliant handrails, unmarked glazing, and inadequate natural light to several rooms.

- Absence of an acoustic report, preventing assessment of internal and external noise impacts.

- The cumulative effect of the above resulting in substandard amenity and inconsistency with the R3 Medium Density Residential zone.

- Unclear as built plans and unauthorised works to CDC/315/2022, including the “subfloor storage to be removed and backfilled”.

The Randwick Local Planning Panel refused the Development Application on 11/12/2025 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 Zone in that it does not complement the desired future built form outcomes of the locality, does not have a high amenity and protect the amenity of residents, is inconsistent with the Council’s strategic planning for residential development in the area, and does not facilitate a high standard of urban design.

2. Pursuant to Clause 4.6 of RLEP 2012, the Applicant has failed to submit a written request to vary the Car Parking Rate, Landscaping or room size development standards under the SEPP (Housing) 2021. The Applicant has failed demonstrate that the proposed non-compliances are unreasonable or unnecessary in the circumstances of the case and has failed to demonstrate that there are sufficient environmental planning grounds to justify variation to the development standards.

3. Pursuant to Section 68(2)(c) of the SEPP (Housing) 2021, the proposal does not provide sufficient communal living areas (nil provided). The submitted Clause 4.6 Assessment is not supported.

4. Pursuant to Section 68(2)(d) of the SEPP (Housing) 2021, the proposal does not provide sufficient communal open space. The submitted Clause 4.6 Assessment is not supported.

5. Pursuant to Section 69(1)(b)(ii) of the SEPP (Housing) 2021, the suitability of the site for the proposed development as not been adequately demonstrated as the site does not comply with the relevant lot size development standard. The submitted Clause 4.6 Assessment is not supported.

6. Pursuant to Section 68 (2) (e) and (f) of the SEPP (Housing) 2021, the proposal has not provided sufficient car parking or landscaping.

7. Pursuant to Section 69 (1)(a)(i) of the SEPP (Housing) 2021, the proposal has not provided sufficient room sizes.

8. Pursuant to Section 69(1)(d), (f), and (h) of the SEPP (Housing) 2021, the proposal has not provided an appropriate workspace for the manager, sufficient kitchen size or adequate bicycle and motorcycle parking.

9. Pursuant to Section 69(2) of the SEPP (Housing) 2021, the proposal:

    a. Does not provide sufficient setback to Middle Street.
    b. Does not provide sufficient solar access to a communal living area.
    c. Is not of a compatible design for the desired future character of the precinct.

10. The BCA/NCC non-compliances, including unsafe stairways, lack of compliant handrails, unmarked glazing, and inadequate natural light to several rooms are not supported.

11. A full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to Acoustic impacts and the provision of clear as-built plans.

12. Pursuant to the provisions of section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the likely impacts from the Application as detailed in this report are considered unacceptable.

13. Pursuant to Section 4.15(1)(c) of Environmental Planning and Assessment Act 1979, the Subject Site is not considered suitable for the proposed development and has not demonstrated that it is capable of facilitating the extent of development sought.

4. Statutory Requirements under Division 8.2

Division 8.2 of the Environmental Planning and Assessment Act 1979 (as amended) provides an applicant with the ability to request a review of the determination of a development application, or an application seeking modification of an existing development consent.

As part of such a review, the consent authority may accept amendments to the original development proposal, provided the amended proposal constitutes substantially the same development as that originally described in the development application. Following the review, the consent authority may either confirm or alter the original determination.

Substantially the same development

In response to the reasons for refusal, the Applicant has submitted the following amendments to the design:

1. Provision of an additional communal indoor living area on the first floor, resulting in the removal of one accommodation room.
2. Reinstatement of the garage to its intended use, including the provision of one on-site parking space and internal alterations to remove an unauthorised bedroom previously constructed within the garage.

The proposed amendments are not considered to result in a development that would fundamentally differ from the original proposal. The proposal, as amended, is therefore considered to remain substantially the same development for the purposes of Division 8.2.

5. Proposal

The proposal seeks development consent for Section 8.2 review of determination regarding DA/1150/2025 for retention of unauthorised works to permit the use of an 8-room co-living development, including partial demolition of internal and external walls, construction of internal and external walls to create new rooms and retention of existing structures onsite.

Specifically the updated proposal includes:

- Retention of previously unauthorised internal alterations associated with the change of use to co-living housing, noting that some works have already been physically carried out on site.
- Conversion of existing ensuite bathrooms associated with removed co-living rooms for communal bathroom use.
- Provision of two communal indoor living areas (one on the ground floor and one on the first floor), with a combined area stated by the Applicant to be approximately 34 sqm.
- Provision of a communal kitchen and communal laundry facilities, intended to service all eight co-living rooms.
- Reinstatement of the garage to its intended use, providing one on-site car parking space, with internal alterations to remove an unauthorised bedroom within the garage.
- Retention of the existing building envelope and setbacks, with the proposed works largely confined to internal reconfiguration of the previously approved dwelling house.
- Retention of the existing landscaped areas and site coverage, with no increase to building footprint proposed.
- Eight (8) co-living rooms are proposed, down from eleven (11) to accommodate the garage car parking space and the two (2) communal rooms (refer Figures 7-10).
- Continued reliance on Clause 4.6 written requests to vary the minimum lot size, communal open space, landscaped area and car parking development standards under the Housing SEPP.

D28/26

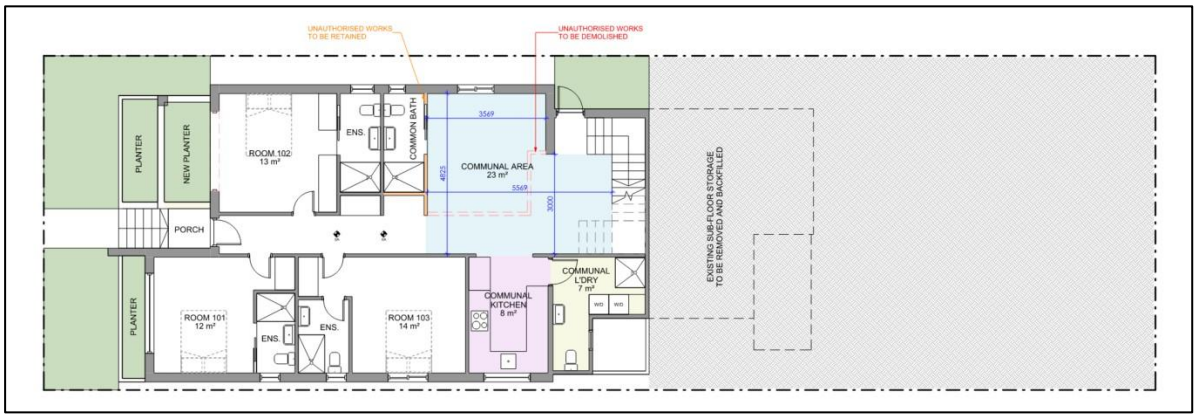


Figure 7: Section 8.2 ground level plan (*Source: A91 Atelier*)

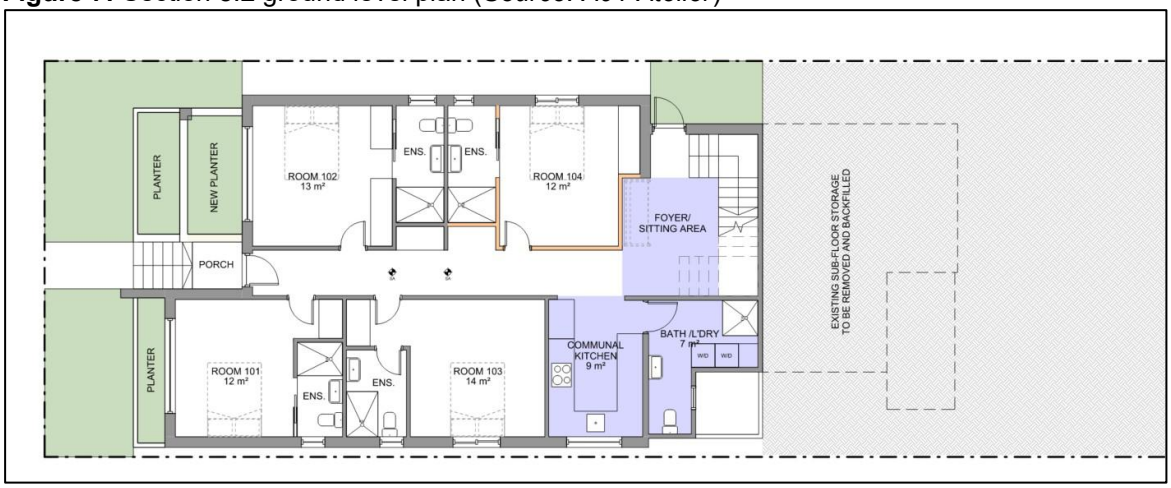


Figure 8: Original DA ground level plan (*Source: A91 Atelier*)

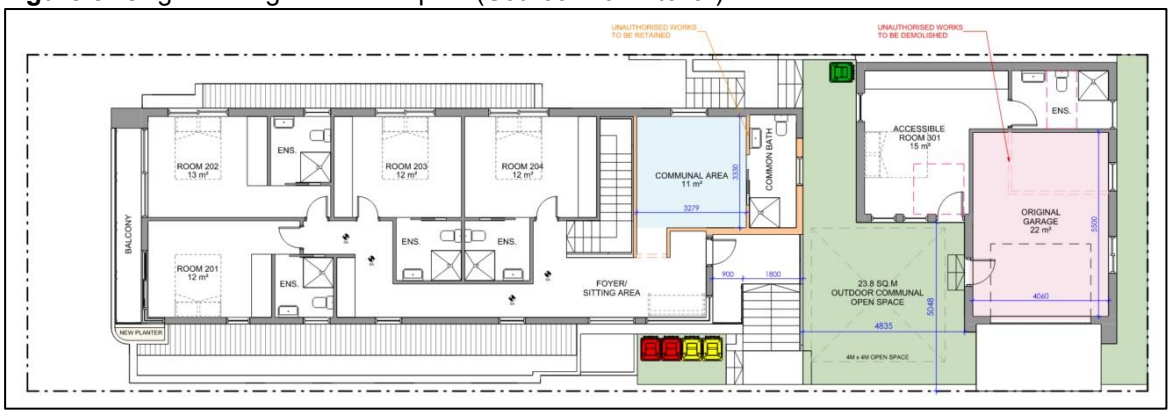


Figure 9: Section 8.2 1st level plan (*Source: A91 Atelier*)

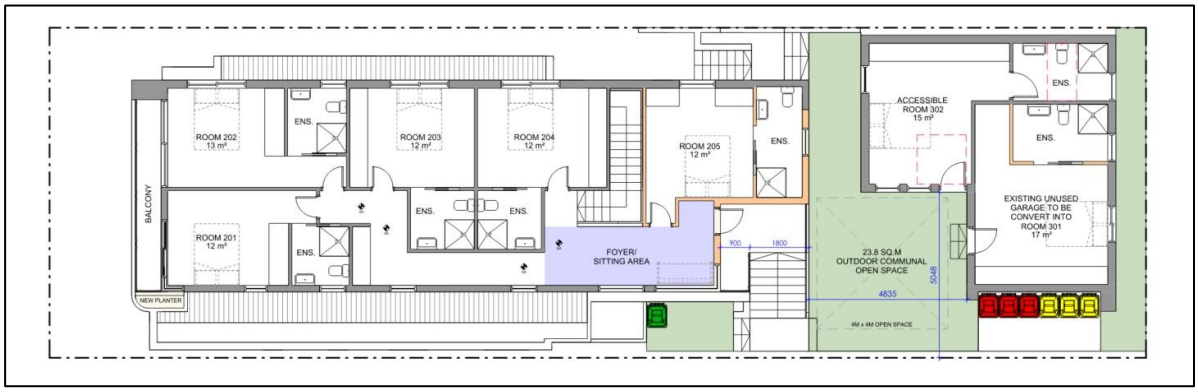


Figure 10: Original DA 1st level plan (*Source: A91 Atelier*)

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:

- 10/79 Houston Road, Kingsford

Issue	Comment
Illegal Boarding Houses The submission objects to an illegal boarding house seeking Development Application approval for the use. It is claimed this would reward illegal behaviour and distorts the diversity of housing available in Kingsford.	The submission is noted. While the unauthorised use of the premises is acknowledged, the assessment of the application is required to be undertaken on its planning merits in accordance with the Environmental Planning and Assessment Act 1979 and relevant planning controls. In this instance, the application has been refused as it fails to comply with multiple co-living development standards under the Housing SEPP, and the associated Clause 4.6 requests have not demonstrated that the standards are unreasonable or unnecessary, nor provided sufficient environmental planning grounds. Further, unresolved building compliance and environmental health issues remain, as detailed in the relevant specialist referrals at Appendix 1, and the reasons for Council's recommendation to refuse development consent are outlined in this report.

7. Relevant Environment Planning Instruments

7.1. SEPP (Housing) 2021

Chapter 3 – Diverse Housing – Co-Living Housing

Chapter 3, Part 3 of the Housing SEPP relates to development for the purpose of co-living housing. An assessment of the proposal against the relevant standards is provided in the table below.

Section	Design Criteria	Proposal	Compliance
Part 3: Co-living housing			
67	**Co-living housing may be carried out on certain land with consent**		
	Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing is permitted under another environmental planning instrument, or development for the purposes of residential flat buildings or shop top housing is permitted under Chapter 5 or another environmental planning instrument.	Residential Flat Buildings are permitted with development consent under RLEP 2012 in the R3 Zone. Co-living is therefore permitted with development consent on the land.	Complies.
68	**Non-discretionary development standards—the Act, s 4.15**		
	(2) The following are non-discretionary development standards in relation to		

Section	Design Criteria	Proposal	Compliance
	development for the purposes of co-living housing—		
	(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,	The Maximum Floor Space Ratio permitted under the RLEP 2012 is 0.75:1. An additional 10% would enable 0.825:1. The proposed GFA of 234.57m^2 equates to an FSR of 0.70:1.	Complies.
	(c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m^2 of communal living area plus at least a further 2m2 for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area,	The proposed co-living development contains 8 rooms. Therefore, the required communal living area is 34m^2. Proposal states 34m^2. 24.51m^2 is provided once subtracting circulation areas.	No. See Key Issues for detail.
	(d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	20% of the site area is 67.02m^2. 23.8m^2 has been provided.	No. Clause 4.6 is not supported as detailed in this report.
	(e) unless a relevant planning instrument specifies a lower number— (i) for development on land in an accessible area—0.2 parking spaces for each private room, or (ii) otherwise—0.5 parking spaces for each private room,	The development is within an accessible area, being approx. 350m to Kingsford Light Rail Station. For a development containing 8 rooms, 1.6 car parking spaces are required. This is rounded up to 2 spaces. 1 space has been provided.	No. Clause 4.6 is not supported as detailed in this report.
	(f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,	The minimum landscape requirements are derived from the C2 – Medium Density DCP, requiring 50% of the site area to be landscaped open space.	No. Clause 4.6 is not supported as detailed in this report.

Section	Design Criteria	Proposal	Compliance
		26% is proposed (86.5m^2)	
69	**Standards for co-living housing**		
	(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—		
	(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m2 and not less than— (i) for a private room intended to be used by a single occupant—12m^2, or (ii) otherwise—16m^2, and	All private rooms are at least 12m² for single occupancy and comply with the maximum size limit.	Yes.
	(b) the minimum lot size for the co-living housing is not less than— (i) for development on land in Zone R2 Low Density Residential—600m^2, or (ii) for development on other land—800m^2, and	The lot size is 335.1m^2, which is a variation of 464.9m^2.	No. Clause 4.6 is not supported as detailed in this report.
	(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and	Workspace is stated to be within communal living area. This communal living area is already undersize – see Key Issues section of this report.	No.
	(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and	A 9m² communal kitchen for 8 private rooms is not considered adequate to service the intensity of the co-living use.	No.
	(g) each private room will be used by no more than 2 occupants, and	All rooms are nominated for a maximum of two occupants.	Yes.
	(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.	Motorcycle or bicycle parking is not indicated on plans.	No.
	(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—		
	(a) the front, side and rear setbacks for the co-living housing are not less than— (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or	The setbacks for multi-dwelling housing are outlined in the Randwick Development Control Plan, Part C2. The frontage width is 10.06m. Therefore, it is considered on merit. The built form was already approved as CDC, however, the conversion to co-living is not supported.	Not supported.

Section	Design Criteria	Proposal	Compliance
	(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	The proposal is two stories.	N/A.
	(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	Ground and 1st level communal living areas face north. Shadow diagrams have not been provided to demonstrate this.	Not demonstrated.
	(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	The precinct is undergoing transition. The proposal does not align with the desired future character of the precinct, noting the numerous non-compliances with the Co-Living development standards. Approving this use would set an undesirable precedent.	No.
70	**No Subdivision**		
	Development consent must not be granted for the subdivision of co-living housing into separate lots.	No subdivision is proposed.	N/A.

7.2. SEPP (Sustainable Buildings) 2022

BASIX is not required for Co-Living development.

7.3. SEPP (Biodiversity and Conservation) 2021

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

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

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

7.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development, including a change of use, retention of building works and proposed building works are unlikely to contain contamination.

7.5. Randwick Local Environmental Plan 2012 (LEP)

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

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

The proposal is inconsistent with the objectives of the zone in that the proposed activity will not protect 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)	0.75:1	0.70:1	Yes.
Cl 4.3: Building height (max)	9.5m.	7.85m	Yes.

7.5.1. Clause 4.6 - Exceptions to development standards

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

8. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl. 69 (1)(b) (2) Minimum Lot Size	800m^2	335.1m^2	464.9m^2	58%
Cl. 68 (2)(d) Minimum Communal Open Space	67.02 m² (20%)	23.8 m²	43.22 m²	65%
Cl. 68(2)(f) Minimum Landscaped Area	168.6 m² (50%)	86.5 m²	82.1 m²	49%
Cl. 68(2)(e) Car Parking (Accessible Area)	2 spaces (rounded up from 1.6)	1 space	1 space	50%

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

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

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

Pursuant to section 35B(2) of the *Environmental Planning and Assessment Regulation 2021*, a development application for development that proposes to contravene a development standard

must be accompanied by a document (also known as a written request) that sets out the grounds on which the Applicant seeks to demonstrate the matters of clause 4.6(3).

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

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

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

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

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

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

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

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

   1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

   2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

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

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following

assessment of whether the matters in Clause 4.6(3) have been satisfied for each contravention of a development standard. The assessment and consideration of the Applicant's request is also documented below in accordance with clause 4.6(4) of RLEP 2012.

8.1. Exception to the Housing SEPP Co-living lot size development standard

The Applicant's written justification for the departure from the lot size standard is contained in Appendix 2.

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

   The Applicant's written request seeks to justify the contravention of the minimum lot size development standard under Clause 69 of the State Environmental Planning Policy (Housing) 2021, which requires a minimum lot size of 800sqm for co-living housing on land zoned R3 Medium Density Residential. The subject site has an area of 337.2m^2, representing a 57% departure from the prescribed standard.

   There are no express objectives associated with the minimum lot size development standard. However, the standard operates as a strategic threshold control, intended to ensure that co-living housing is provided on sites of sufficient size to accommodate the inherently higher intensity of the use, including adequate communal spaces, landscaping, servicing, and acceptable residential amenity outcomes.

   The Applicant contends that compliance with the development standard is unreasonable or unnecessary on the basis that the proposed development retains a built form similar to a previously approved dwelling house and is said to achieve acceptable amenity outcomes.

   The Applicant further submits that the non-compliance arises from long-standing subdivision patterns and site constraints, and that site amalgamation to achieve the minimum lot size is not feasible. It is argued that the proposal can operate as a functional co-living development due to the retention of a dwelling-scale built form, a reduced number of bedrooms, and the site's proximity to public transport and local services. On this basis, the Applicant contends that strict compliance with the minimum lot size standard is unnecessary, as acceptable amenity outcomes can still be achieved despite the reduced site area.

   Assessing officer's comment:

   Council does not accept the Applicant's position. The minimum lot size requirement is a fundamental policy control that deliberately limits co-living development to suitably sized sites. The Applicant has not demonstrated why a site with an area of 337.2 m^2 is appropriate to accommodate a land use expressly contemplated to require a minimum site area of 800m^2.

   The reliance on the retention of an existing dwelling house envelope is misplaced. Co-living housing is a distinct land use with materially different intensity, occupancy characteristics, and amenity demands when compared to a dwelling house. The absence of additional bulk does not negate the increased functional demands of the use, nor does it justify the substantial shortfall in site area.

   The arguments advanced relate primarily to site constraints, economic considerations, and development yield. These matters do not demonstrate that the development standard itself is unreasonable or unnecessary as it applies to this land.

   In conclusion, the Applicant's written request has not adequately demonstrated that compliance with the lot size development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- The existing subdivision pattern and inability to amalgamate adjoining sites;
- Consistency with the built form and character of the locality;
- Retention of a dwelling-scale envelope;
- Proximity to public transport and services; and
- An asserted absence of adverse amenity impacts.

Assessing officer's comment:

Council does not consider that the environmental planning grounds advanced are sufficient to justify the contravention of the development standard.

The constraints identified by the Applicant, including historic subdivision patterns and land value considerations, are not unique to the site and apply broadly across established residential areas. Accepting such grounds would undermine the strategic intent of the minimum lot size standard and set an undesirable precedent.

The comparison to a dwelling house approved under a separate planning pathway is inappropriate. co-living housing involves greater resident numbers and a corresponding reliance on shared facilities. These characteristics require more generous site dimensions, not less.

Further, the absence of external amenity impacts such as overshadowing or privacy impacts does not, of itself, justify a substantial departure from a control designed to manage use intensity and internal amenity. The standard seeks to ensure that co-living housing is located on sites capable of accommodating the use in a comprehensive and orderly manner.

In conclusion, the Applicant's written request has not 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 not been satisfied and that development consent may not be granted for development that contravenes the lot size development standard.

8.2. Exception to the communal open space development standard

The Applicant's written justification for the departure from the communal open space 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 communal open space requirement under Clause 68(2)(d) of the State Environmental Planning Policy (Housing) 2021, which requires a minimum of 20% of the site area to be provided as communal open space for co-living housing. The proposal provides communal open space significantly below this requirement.

   There are no express objectives associated with the communal open space development standard. However, the control operates as an amenity-based planning safeguard, intended to ensure that co-living developments provide adequate shared outdoor space to support social interaction and manage the impacts of increased residential intensity inherent in the use.

   The Applicant contends that compliance with the communal open space standard is unreasonable or unnecessary on the basis that the proposal retains a dwelling-scale built form and provides a combination of internal communal areas and private rooms that are said to

achieve acceptable amenity outcomes. The Applicant further submits that strict compliance would require the removal of bedrooms, thereby reducing housing supply, and notes the site's proximity to public open space as an alternative for residents' recreational needs.

Assessing officer's comment:

Council does not accept the Applicant's position. Communal open space is a fundamental component of the co-living housing model and is relied upon to compensate for reduced private living areas and higher shared occupancy levels. The retention of a dwelling-scale envelope does not diminish the operational demands of the use or the need for adequately sized, on-site communal outdoor space.

The reliance on internal communal rooms or nearby public parks does not satisfy the intent of the standard, which seeks to ensure that residents have exclusive, functional, and readily accessible communal open space within the site. Arguments relating to development yield and housing numbers do not demonstrate that the communal open space standard itself is unreasonable or unnecessary as it applies to this development.

In conclusion, the Applicant's written request has not adequately demonstrated that compliance with the communal open space 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 communal open space development standard under Clause 68(2)(d) of the State Environmental Planning Policy (Housing) 2021, on the following bases:

- The retention of a dwelling-scale built form and limited physical change to the existing development;
- The provision of internal communal living areas, including shared kitchen, laundry and living spaces;
- The site's proximity to public open space within walking distance; and
- The assertion that the proposal achieves acceptable internal amenity outcomes despite reduced on-site communal open space provision.

Assessing officer's comment:

Council does not consider that the environmental planning grounds advanced are sufficient to justify the contravention of the communal open space development standard.

Communal open space is a core planning requirement for co-living housing and plays a critical role in mitigating the impacts of higher residential intensity and increased reliance on shared living. The retention of an existing dwelling-scale envelope does not reduce the operational demands of the co-living use or obviate the need for adequate on-site communal outdoor space.

The reliance on internal communal areas does not satisfy the intent of the standard, which specifically requires the provision of outdoor communal open space that is accessible, functional, and exclusive to residents. Similarly, proximity to public open space does not substitute for on-site communal open space, as public parks are not under the control of occupants and are not intended to replace private communal facilities for daily use.

The grounds advanced by the Applicant primarily promote the benefits or feasibility of the development rather than demonstrating why the communal open space standard itself is unreasonable or unnecessary. As such, they do not provide sufficient justification for a substantial departure from a standard designed to protect resident amenity and ensure appropriate accommodation of the co-living use.

In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the communal open space development standard.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent may not be granted for development that contravenes the communal open space development standard.

8.3. Exception to the Housing SEPP co-living landscaped area development standard

The Applicant's written justification for the departure from the landscaped area 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 landscaped area requirement under Clause 68(2)(f) of the State Environmental Planning Policy (Housing) 2021, which applies the minimum landscaped area controls for multi-dwelling housing to co-living housing on land zoned R3 Medium Density Residential. In this instance, a minimum of 50% of the site area is required to be provided as landscaped area. The proposal provides approximately 26%, representing a substantial departure from the prescribed standard.

There are no express objectives associated with the landscaped area development standard. However, the control operates as an amenity and environmental performance safeguard, intended to ensure that higher-intensity residential development provides adequate landscaping, deep soil, and usable outdoor space to support residential amenity, urban greening, and environmental outcomes.

The Applicant contends that compliance with the landscaped area standard is unreasonable or unnecessary on the basis that the proposal generally retains the existing building footprint and does not increase site coverage beyond current conditions. It is argued that providing a compliant landscaped area would require demolition of existing built form and reduce housing yield, and that the proposal does not result in additional adverse impacts on surrounding development or environmental features compared to the existing site condition.

Assessing officer's comment:

Council does not accept the Applicant's position. The landscaped area requirement is a fundamental planning control that applies as a direct consequence of the proposed change to a higher-intensity co-living land use. The fact that the proposal retains an existing building footprint does not demonstrate that the landscaped area standard is unreasonable or unnecessary, nor does it justify a significant shortfall against a control designed to mitigate the impacts of more intensive residential occupation.

The baseline for assessment is compliance with the applicable development standard, not the existing site condition or a previously approved dwelling house. Co-living housing involves increased occupancy and reduced private open space, which heightens the importance of adequate on-site landscaping and deep soil provision. Arguments relating to demolition avoidance or housing yield do not demonstrate that the landscaped area standard itself is unreasonable or unnecessary as it applies to this land.

In conclusion, the Applicant's written request has not adequately demonstrated that compliance with the landscaped area 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 landscaped area development standard on the following bases:
- Retention of the existing building footprint and envelope, with no increase in site coverage;

- the assertion that providing 50% landscaped area would require demolition of existing rooms and reduce housing availability;
- The submission that the proposal does not reduce landscaped area, deep soil, or tree canopy beyond existing conditions;
- The contention that the non-compliance will not result in adverse amenity or environmental impacts on surrounding development; and
- The view that qualitative landscaping outcomes can be achieved notwithstanding non-compliance with the numerical standard.

Assessing officer's comment:

Council does not consider that the environmental planning grounds advanced are sufficient to justify the contravention of the landscaped area development standard.

The landscaped area control is integral to managing the cumulative amenity and environmental impacts of co-living development, particularly in circumstances where private open space is limited and reliance on shared outdoor areas is increased. Retention of existing site conditions does not demonstrate that the standard is inappropriate, nor does it justify a departure of the scale proposed.

Arguments relating to development feasibility, avoidance of demolition, or housing yield primarily promote the benefits of the development rather than explaining why the landscaped area standard itself is unreasonable or unnecessary. Further, the absence of identified external amenity impacts does not, in isolation, justify a substantial non-compliance with a control intended to secure adequate landscaping, deep soil areas, and environmental performance outcomes for higher-intensity residential development.

In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the landscaped area development standard.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent may not be granted for development that contravenes the landscaped open space development standard.

8.4. Exception to the Housing SEPP car parking development standard

The Applicant's written justification for the departure from the landscaped area 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 car parking requirement under Clause 68(2)(e) of the State Environmental Planning Policy (Housing) 2021, which requires a minimum of 0.2 parking spaces per private room for co-living housing on land located within an accessible area. For eight private rooms, a minimum provision of two on-site car parking spaces is required. The proposal provides one on-site car parking space, resulting in a shortfall of one space.

There are no express objectives associated with the car parking development standard. However, the control operates as a demand-management mechanism intended to ensure that development provides sufficient on-site parking to meet anticipated demand and minimise reliance on the surrounding on-street parking network, particularly for higher-occupancy residential uses.

The Applicant contends that compliance with the car parking standard is unreasonable or unnecessary on the basis that the site is located within an accessible area, is well serviced by public transport, and is comparable in scale to a large dwelling house previously approved on

the site. It is also argued that the retention of a single parking space is consistent with existing site conditions and that future residents are unlikely to rely on private vehicles.

Assessing officer's comment:

Council does not accept the Applicant's position. The proposed development already benefits from the reduced parking rate applicable to accessible areas under the Housing SEPP. The requirement for two parking spaces reflects the minimum provision considered appropriate for an eight-room co-living development and accounts for resident, visitor, and service vehicle demand.

As detailed in the Development Engineering referral (Appendix 1), the proposal would result in a parking shortfall of one space, which would place additional pressure on the surrounding on-street parking network, which is noted to operate at or near capacity for extended periods. Reliance on public transport does not justify further reductions below the minimum SEPP rate. The comparison to a dwelling house approved under a separate planning pathway is not appropriate. Co-living housing is a distinct land use with higher occupancy levels and different parking demand characteristics. The Applicant has not demonstrated that the car parking standard itself is unreasonable or unnecessary as it applies to this development.

In conclusion, the Applicant's written request has not adequately demonstrated that compliance with the car parking 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 car parking development standard on the following bases:

- The site's proximity to light rail and bus services;
- The assumption that residents are unlikely to own private vehicles;
- The retention of the existing on-site parking arrangement;
- The assertion that the proposal will not result in increased parking demand compared to a dwelling house; and
- The view that reduced parking provision supports housing affordability.

Assessing officer's comment:

Council does not consider that the environmental planning grounds advanced are sufficient to justify the contravention of the car parking development standard.

As outlined in the Development Engineering referral (Appendix 1), the proposed parking shortfall would place increased strain on the local on-street parking network, which is already heavily utilised. The Housing SEPP parking rate for accessible areas represents a balanced policy position and further reductions are not supported in the absence of compelling, site-specific justification.

Assumptions regarding resident travel behaviour are speculative and cannot be enforced through conditions of consent. Further, arguments relating to affordability or development yield promote the perceived benefits of the proposal rather than demonstrating why the parking standard itself is unreasonable or unnecessary.

The environmental planning grounds relied upon do not adequately address the operational impacts of the co-living use on parking demand and fail to demonstrate that the proposed shortfall can be accommodated without adverse effects on the surrounding area.

In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the car parking development standard.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have not been satisfied and that development consent may not be granted for development that contravenes the landscaped open space development standard.

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.
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 environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant character in the locality, no changes to external CDC approved built form are proposed. The proposal is likely to result in detrimental social impacts due to the intensification of residential use on a constrained site without adequate communal living areas, outdoor space, parking or acoustic mitigation. These deficiencies would adversely affect resident and neighbour amenity through increased noise potential, on-street parking reliance and ineffective on-site management.
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 insufficient area to accommodate the proposed land use. Therefore, the site is considered not 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 fails to promote the objectives of the zone and will result in significant adverse environmental and social impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Communal Living Area

The Housing SEPP requires that co-living housing containing more than six (6) private rooms provide a minimum of 34 m² of communal living area, excluding circulation space, with minimum dimensions of 3 metres for each communal living area.

The Applicant asserts that the proposal provides a total of 34 m² of communal living area across two rooms. However, a review of the submitted plans demonstrates that this figure includes areas that function primarily as circulation space, rather than usable communal living areas. As shown in Figures 11 and 12, once circulation areas are excluded, the combined functional communal living area is approximately 24.51 m², which falls well short of the minimum requirement under Clause 68(2)(c) of the Housing SEPP.



Figure 11: Ground level communal living area – Council Assessment Officer measurement



Figure 12: 1st level communal living area – Council Assessment Officer measurement

As a result, the proposal does not provide communal living areas of sufficient size or functionality to support the intensity of the co-living use. Communal living areas are a fundamental component of co-living housing, intended to facilitate shared living and social interaction. In this instance, the undersized communal spaces would result in substandard internal amenity for future occupants.

In addition, the Applicant proposes that the required manager workspace be accommodated within these same communal living areas. Given that the communal living areas are already undersized and non-compliant, they cannot reasonably accommodate both resident communal use and a functional manager workspace. This further exacerbates the amenity shortfall and undermines compliance with Clause 69(1)(d) of the Housing SEPP.

While the communal living areas are shown to face generally north, the proposal has not been accompanied by shadow diagrams or solar access analysis to demonstrate compliance with the requirement to provide at least three (3) hours of direct solar access between 9 am and 3 pm at mid-winter to a communal living area, as required by Clause 69(2)(c) of the Housing SEPP. Further, the communal living rooms were originally approved as part of a dwelling house under a CDC and are characterised by relatively limited window openings (refer Figure 13). Given the proximity of larger residential flat buildings at 17–19 Forsyth Street, there is uncertainty as to whether adequate solar access and daylight would be achieved. In the absence of supporting analysis, compliance with this requirement has not been demonstrated.

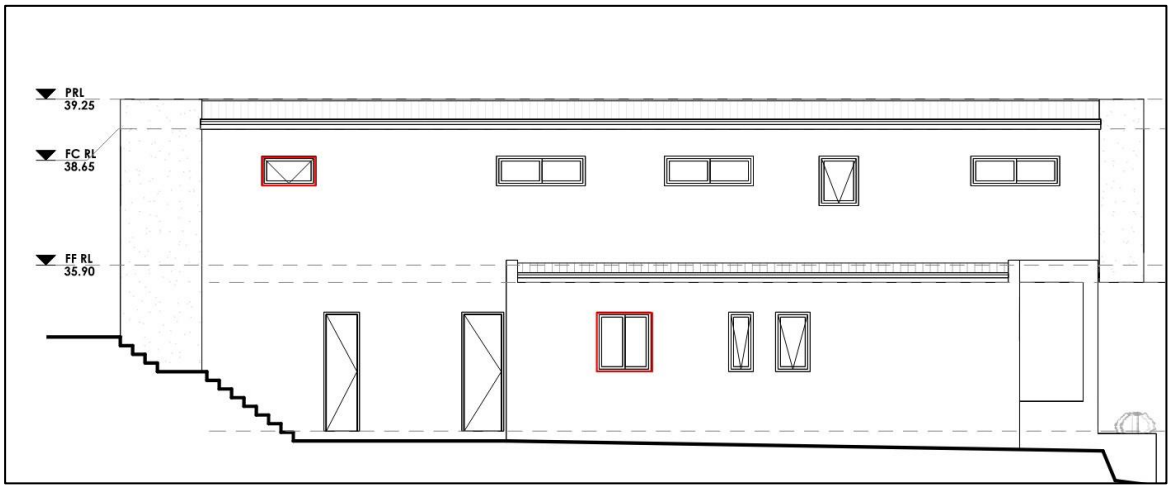


Figure 13: North elevation (*Source: A91 Atelier*)
Communal living area windows highlighted in red by Council Assessment Officer

Building Compliance & Environmental Health

Council's specialist referrals have identified significant unresolved building compliance and environmental health issues associated with the proposal.

As detailed in Appendix 1, Council's Building Compliance officers have identified multiple non-compliances with the BCA/NCC, including issues relating to stair safety, handrails, visibility of glazing and inadequate natural light to several rooms. These non-compliances raise concerns regarding occupant safety, health and amenity and have not been adequately resolved as part of the Section 8.2 review.

Further, Council's Environmental Health officers have advised that the proposal is not supported due to the absence of an acoustic report, insufficient consideration of internal and external noise impacts, and deficiencies in the submitted Plan of Management. These matters are particularly important given the intensified residential use proposed on a constrained site.

The detailed assessment and recommendations of Council's officers within Building Compliance, Environmental Health and Development Engineering departments are provided in Appendix 1 and have been relied upon in forming Council's recommendation.

10. Conclusion

That the Section 8.2 Review of determination regarding DA/1150/2025 for retention of unauthorised works to permit the use of an 8-room co-living development, including partial demolition of internal and external walls, construction of internal and external walls to create new rooms and retention of existing structures onsite (Clause 4.6 Variations to Minimum Lot Size, Landscaped Area, Communal Open Space and Car Parking) be refused 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 Zone in that it does not complement the desired future built form outcomes of the locality, does not have a high amenity and protect the amenity of residents, is inconsistent with the Council's strategic planning for residential development in the area, and does not facilitate a high standard of urban design.

2. Pursuant to Clause 4.6 of Randwick Local Environmental Plan 2012, the Applicant has failed to demonstrate that compliance with the minimum lot size, communal open space, landscaped area and car parking development standards under State Environmental Planning Policy (Housing) 2021 is unreasonable or unnecessary in the circumstances of the case, and has failed to demonstrate that there are sufficient environmental planning grounds to justify contravention of those development standards.

3. Pursuant to Clause 68(2)(c) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required communal living area for co-living housing. The nominated communal living areas include circulation space and, once excluded, do not provide the minimum functional communal living area required to support the intensity of the proposed co-living use, resulting in substandard residential amenity.

4. Pursuant to Clause 68(2)(d) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required communal open space and the submitted Clause 4.6 request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary, nor that sufficient environmental planning grounds exist to justify the non-compliance.

5. Pursuant to Clause 69(1)(b)(ii) of State Environmental Planning Policy (Housing) 2021, the suitability of the site for the proposed co-living housing has not been adequately demonstrated, as the site does not comply with the minimum lot size development standard. The submitted Clause 4.6 request is not supported.

6. Pursuant to Clause 68(2)(f) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required landscaped area for co-living housing. The

submitted Clause 4.6 request is not supported, and the shortfall undermines residential amenity and environmental performance outcomes.

7. Pursuant to Clause 68(2)(e) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required on-site car parking for co-living housing. The submitted Clause 4.6 request is not supported, and Council's Development Engineering officers have advised that the parking shortfall would place unacceptable strain on the surrounding on-street parking network.

8. Pursuant to Clause 69(1)(d) and (f) of State Environmental Planning Policy (Housing) 2021, the proposal does not provide an appropriate and functional manager workspace or adequate communal kitchen facilities commensurate with the intensity of the co-living use, resulting in unacceptable internal amenity outcomes.

9. Pursuant to Clause 69(2)(c) of State Environmental Planning Policy (Housing) 2021, the proposal has not demonstrated that at least one communal living area will receive a minimum of three (3) hours of direct solar access between 9 am and 3 pm at mid-winter. No supporting solar access analysis has been provided, and surrounding development may limit solar access in practice.

10. The proposal includes unauthorised building works that do not comply with the requirements of the National Construction Code and Building Code of Australia, including deficiencies relating to stair safety, handrails, visibility of glazing and natural light to habitable rooms. The extent of these non-compliances results in unacceptable safety and amenity outcomes for occupants.

11. A full and robust assessment of the proposal cannot be undertaken as insufficient information has been submitted regarding acoustic impacts and their management. The absence of an acoustic report and deficiencies in the Plan of Management result in unacceptable uncertainty regarding internal and external noise impacts on resident and neighbourhood amenity.

12. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the likely impacts of the development, as detailed in this report, are considered unacceptable having regard to cumulative amenity, environmental health and operational impacts.

15. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development, as the application has not demonstrated that the site can accommodate the proposed intensity of co-living housing without resulting in adverse impacts or compromising the provision of adequate amenity for future occupants.

16. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest as it fails to promote the objectives of the zone and would result in unacceptable environmental and social impacts arising from the intensity of the co-living use and the unresolved amenity and safety concerns. The proposal would also establish an undesirable precedent by facilitating inappropriate development that does not comply with key provisions and considerations under relevant State Government and Council planning policies..

13.

Appendix 1: Referrals

1. Referral comments:

1.1. Environmental Health

Noise

The proposed development seeks to intensify the use of the site from a single dwelling to a co living development with 8 rooms and 8 residents. Noise emanating from within the development with potential noise transfer between rooms and communal areas as well as the impact of the development to neighbouring properties has not been appropriately considered within the Statement of Environmental Effects (SEE) nor has there been any acoustic assessment of the development by way of an acoustic report.
In particular:

- External noise impacts associated with the increased residential density have not been assessed.
- Internal acoustic impacts, including potential noise transfer between rooms and communal areas and any plant or equipment, have not been addressed.
- An Acoustic Report was requested on the 14th November 2025 to be submitted in support of the application, but to date has not been received by Council.

In order to properly assess the existing and potential noise sources and emissions from the proposed development, and the potential impact upon the amenity of the locality, an Acoustic Report prepared by a suitably qualified acoustic consultant should have been submitted to Council for assessment prior to determination of the application.

Due to this, the Environmental Health team does not support the approval of this development application, however, should the application be approved, conditions have been included in the consent.

Plan of Management

While a Plan of Management (PoM) has been submitted with the application, the PoM lacks detail on specific requirements outlined in Part C4 of Council's DCP relating to co-living developments. Specifically points that have been omitted from the PoM include:

a) Ongoing operational arrangements to minimise and manage noise transmission to adjoining properties
b) Information to residents on community and education services, including health, counselling and cultural services
c) Management procedures over holiday periods

Further, the Plan of Management (PoM) states that "in the instance of an emergency evacuation, the property manager will direct residents to emergency exits and the emergency assembly point." However, the Statement of Environmental Effects (SEE) indicates that "efforts will be made to ensure that the duty manager resides within a 10-minute drive of the property." In this context, the proposed arrangement appears impractical and should be reconsidered. The PoM should be amended to clearly outline how emergency evacuation procedures will be implemented in practice, including how residents will be effectively directed in the absence of an on-site manager.

Overall, the proposal introduces a higher density living arrangement on a relatively constrained site. This increases the importance of effective ventilation, acoustic treatment, hygiene management, and waste provision. These matters should be addressed through additional documentation or conditions of consent to safeguard occupant health and amenity.

Recommendation:

Due to insufficient information regarding acoustic impacts and their management, including the absence of a submitted acoustic report, as well as providing insufficient information within the Plan

of Management, the Environmental Health team does not support the approval of this development application

1.2. Development Engineer

General Comments
The application is not supported in its present form by Development Engineering due to identified issues with the provision of off-street parking and should be refused.

Off-Street Parking Provision Issues
The history of the site and its corresponding off-street parking provisions are outlined in the below table:

Application Numbers	Development Type	Car Spaces Provided	Car Spaces Required	Parking Shortfall
CDC/315/2022	7-bedroom dwelling house	1	1	0
DA/1150/2025/REV	8-bedroom co-living building	1	2 (rounded up from 1.6)	1

The off-street parking rate for the CDC alterations and additions development originates from *Clause 3.16 (1), Subdivision 4, Division 3, Part 3 Housing Code of the SEPP (Exempt and Complying Development Codes) 2008* which states that:

(1) At least 1 off-street car parking space, being an open hard stand space or a carport or garage, must be provided on a lot unless—
- *(a) the lot has a width of less than 8m measured at the building line, or*
- *(b) the complying development is the alteration of, or an addition to, a dwelling house and the lot does not contain an off-street car parking space, or*
- *(c) the complying development is the erection or alteration of, or an addition to, attached development and the lot does not contain an off-street car parking space.*

The current development application seeks to add an additional private room within the gym that was previously approved and constructed under the CDC application. The development also proposes internal changes along with a change of use from dwelling house to co-living.

Under *Clause 68(2)(e)(i) of the SEPP (Housing)*, each private room generates an off-street parking demand of 0.2 spaces when the land is located in an accessible area. The area is considered accessible due to bus routes and the “Kingsford” light rail stop. Due to the total of 8 private rooms, the parking demand is 1.6 spaces, which is rounded up to 2 spaces. The development only proposes 1 off-street car space and would therefore generate a shortfall of 1 car space. The shortfall would apply strain on the nearby on-street parking network which is frequently at capacity during the entire day as shown by street imaging that is accessible via Google Street View. Council believes that the development cannot rely another further on public transport in place of private vehicles seeing as the development is already taking advantage of the reduce parking rate provided by the SEPP for developments in accessible areas (0.2 spaces per private room) instead of developments in non-accessible areas (0.5 spaces per private room (*Clause 68(2)(e)(i)*). In conclusion, Council cannot support the proposed parking shortfall and the development should be refused.

The application is not supported in its current form and should be refused.

1.3. Building Compliance

Comments/Background:

The following applications are relevant to the site:
- DA/352/2020 – Demolition and construction of new boarding house containing 32 rooms – Refused by Council on 31 October 2022.
- CDC/315/2022 – Alterations and additions to existing dwelling and construction of proposed outbuilding – Approved by Exclusive Certifiers on 16 September 2022.
- Final Occupation Certificate – Issued by Exclusive Certifiers on 27 June 2024.

A complaint was received by Council in March 2025, advising of the building operating as a boarding house.

An investigation and inspection by Council's Senior Building Surveyor revealed that unauthorised works had been carried out and the premises were being used as a boarding house without prior development consent.

Consequently, a Notice of Intention was issued to the property owner on 3 April 2025.

In July 2025, Council issued the Order to the owner in relation to the unauthorised use and the unauthorised building works.

BCA Assessment Report:

An examination of the BCA Assessment Report, prepared by Allcert dated 9 October 2025, revealed the following works do not comply with the requirements of the BCA/NCC;

1. Item no. 1 (BCA Clause 8.4.7 – Visibility of glazing) - The level 1 SOU's that provide entrance to the balconies have full glazed panels that are not marked with any opaque bands
2. Item no. 4 (BCA Clause 10.5.1 – Natural light) - The provision of natural light provided to the following sole occupancy units is less than 10% of the floor area;
    - Room 104 is 8%
    - Room 203 is 6%
    - Room 204 is 6%
    - Room 205 is 3%
3. Item no. 5 (BCA Clause 11.2.2 – Stairway construction) – There are external single risers that are not compliant with this Clause and are deemed to be trip hazards
4. Item no. 6 (BCA Clause 11.3.5 – Handrails) – There are no handrails fitted to the stairway to the front ground floor entrance from Forsyth St. The handrail on the internal stairway does not extend to the first riser and stops just short of the second riser and is only on one side. Also the barrier/handrail on the open side of the stairway is not continuous along the winding risers and goings. The stairway from the rear exit on Level 1 does not have a handrail that does not a handrail that extends from the top landing to the bottom landing.

To summarise, the abovementioned non compliances with the NCC/BCA make the current building unsafe and unhealthy, and pose significant impacts to occupant amenity.

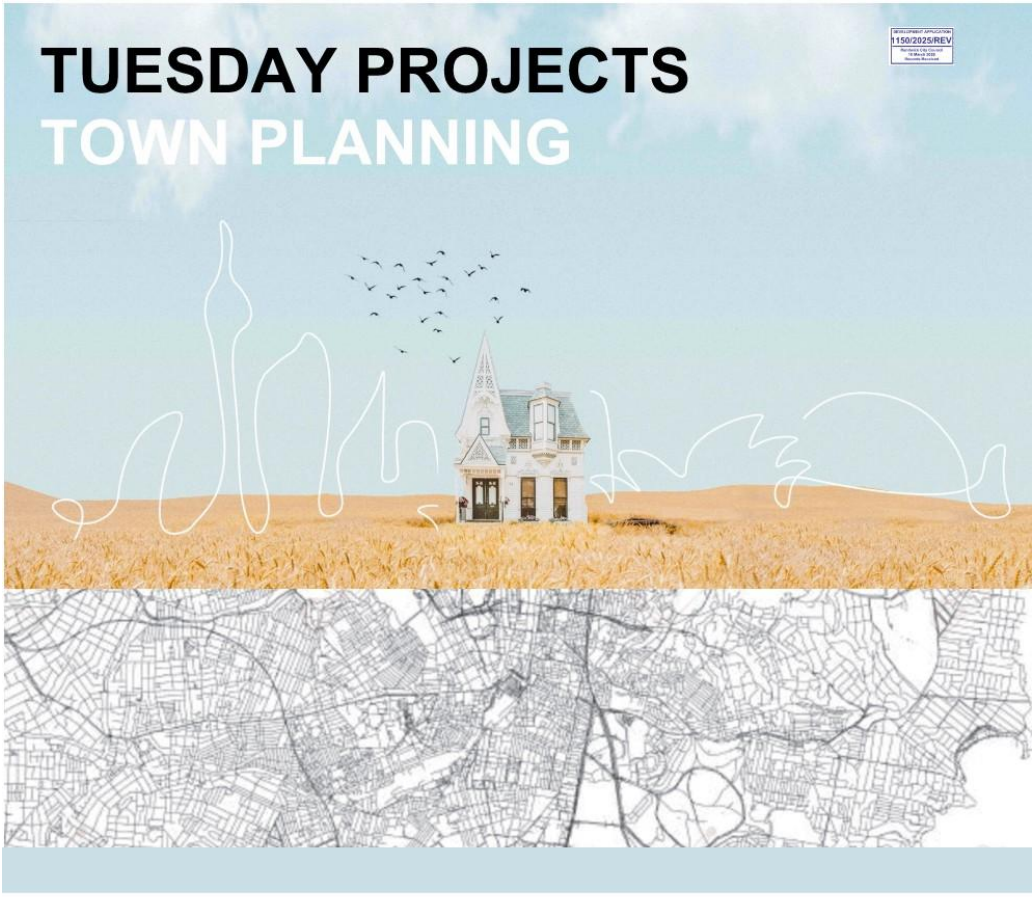
Recommendation:

It is recommended that the Development Application be refused due to the extent of the non-compliances with the requirements of the BCA/NCC which result in adverse effects regarding safety and amenity.

D28/26

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

2.1 Lot Size



Clause 4.6 Written Variation Request – Lot Size

21 Forsyth Street, Kingsford

"Change of use to co-living housing with alterations and additions"

3 March 2026

Tuesday Projects | ABN 49 577 661 195 | w: www.tuesdayprojects.com.au | m: 0468 535 194 | e: emma@tuesdayprojects.com.au

1. BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The proposal is in direct response to the growing housing needs of the Kingsford locality. The design is commensurate in scale, bulk, site coverage, and materiality to the existing approved dwelling and many of the other dwellings located in the immediate locality.

The proposed works include:

- **Change of use** from dwelling house to 8 x room co-living housing;
- **Partial demolition** of internal and external walls of the main building and outbuilding;
- **Construction** of new internal and external walls within the main building and outbuilding to create new rooms; and the
- **Retention** of most of the existing structures on site.

The proposal is of a reasonable scale and provides a high quality and durable co-living housing development which will assist to meet the high demand for spacious and functional housing in the Kingsford locality. The development is commensurate in scale and character with other properties in the streetscape, generally maintaining the existing approved building envelope. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

1.1 Clause 69 of the State Environmental Planning Policy (Housing) 2021

Clause 69 of the *State Environmental Planning Policy (Housing) 2021* states that development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that the minimum lot size for the co-living housing is not less than 800sqm for land zoned anything other than R2 Low Density Residential.

The development site a 21 Forsyth Street, Kingsford has a lot size of 337.2sqm.

1.2 Variation Summary Table

Component	Requirement	Proposal	Variation %
Cl 69 Lot Size	Minimum 800sqm	337.2sqm	57%

D28/26

Environmental Planning Grounds Relied Upon

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are outlined as follows.

The development represents a successfully functioning co-living building.
The proposed design features a functional and high quality development, with high levels of amenity for residents and visitors.

The non-compliance is a result of the existing site constraints.
The site is limited in area due to the longstanding subdivision pattern and fragmented land ownership within the wider the immediate locality. Due to high land values in the Kingsford area, it is not feasible to amalgamate with neighbouring sites to achieve the minimum 800sqm needed.

The non-compliance is entirely consistent with the character of the locality.
The proposed development is consistent with the precincts' medium density character, defined by building envelopes that directly align with the subject building. The proposed variation can also be considered compatible with other forms of residential development in the visual catchment which assists in being compatible with the desired future character. The physical building on site is largely aligned with the envelope of an approved dwelling house.

The non-compliance will have no material impacts on surrounding development.
The non-compliance does not have any physical impacts to the surrounding area, as no major physical changes will occur as a result of the change of use. Traffic impacts are mitigated by way of close proximity to public transport and active transport. Acoustic impacts are mitigated by way of a reduction of bedroom numbers from 11 to 8 bedrooms from the original DA to the latest design. This bedrooms also results in a household which is comparable to a large family residing in a dwelling of the same envelope.

It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically, the undersized lot results in no detrimental overshadowing, visual bulk, streetscape or privacy impacts.

Orderly and economic use of land.
The social benefits of providing a development that improves the functionality and housing diversity of the area should be given weight in the consideration of the variation request. Given the nature of alterations and additions, strict compliance with the standard would result in a site that is sterilised for use as a dwelling house, which is in conflict with the intended objectives of the R3 zone.

The proposal meets aims and objectives of key planning documents.

The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (detailed in the accompanying Statement of Environmental Effects). The proposed development also achieves the objects in Section 1.3 of the EPA Act, specifically the proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential and commercial facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c)), and the proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The request will now further expand on the identified environmental planning grounds.

2. IS THE STANDARD A DEVELOPMENT STANDARD?

A development standard is defined in Section 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."

The minimum lot size control falls under subsection (a); therefore, the control is a development standard.

3. CLAUSE 4.6 OF THE STANDARD INSTRUMENT AND RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

The Standard Instrument SEPP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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.

In the case of Samadi v Council of the City of Sydney [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

> Clause 4.6 of SEPP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding

that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The NSW Department of Planning and Environment 'Guide to Varying Development Standards' was published in November 2023, with updated guidance and instruction regarding the requirements of a Clause 4.6 written variation request.

The Guide advised that consistency with zone objectives is no longer a matter for consideration within a Clause 4.6, as such an assessment is undertaken in accordance with Clause 4.15 of the NSW Environmental Planning and Assessment Act (EP&A Act) 1979. The requirements of Clause 4.15 of the EP&A Act have been considered in the assessment of this DA within the Statement of Environmental Effects (SEE) report prepared by Tuesday Projects, submitted alongside this DA.

Precondition 2 - Consistency with the objectives of the standard

There are no objectives relating specifically to the minimum lot size standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling boarding house development. The principles of the policy stipulated in clause 3 are:

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

The proposed co-living development is considered to be consistent with these principles. The proposed co-living housing will provide for greater housing diversity in a growing area, that will meet the needs of households in need of less expensive housing as co-living rooms are often inherently more affordable than renting a self-contained dwelling due to their generally smaller unit sizes,

inability to be owner occupied, and shared cooking and laundry facilities. No existing affordable housing is being reduced, and the new proposal does not impact any adverse climate or environmental impacts.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation. By contrast, a compliant proposal would not allow the substantial upgrade in residential amenity in the manner intended.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of the case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term 'environmental planning grounds' is not defined and may be interpreted with wide scope.

For the reasons detailed throughout this report, it is considered there are sufficient environmental planning grounds to justify a variation to the minimum lot size development standard.

In the 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C, outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are

particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

The more recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the SEPP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five v Ashfield decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case …and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means (emphasis added):

> "the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

However, in the judgement of RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

> "… in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not

> sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).”

This is consistent with a previous judgment in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, where on appeal of a commissioner’s decision, the Court affirmed at [78] that “The request cannot ‘adequately’ address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters”.

Accordingly, regarding the proposed variation to the minimum lot size, it is considered that this Clause 4.6 request has in fact demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (Initial Action Pty Ltd v Woollahra Municipal Council (2018). Refer also to Section 5 below.

Additionally, under (Initial Action Pty Ltd v Woollahra Municipal Council (2018) at [24], the Chief Judge stated that “The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole”. It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in Wehbe v Pittwater Council (2007).

The five tests under Wehbe are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are satisfied. Refer to discussion under Precondition 2. The objectives of the standard are concerned with the achievement of compatibility with the character, amenity and landform of the area. I conclude that the proposed minimum lot size

	standard is appropriate as it results in a built form that is compatible with the character, amenity and landform area. The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliance is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	Not applicable — the development standards of minimum lot size cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's or the NSW Governments actions. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land	The zoning of the land is appropriate for the development standard.

should not have been included in the particular zone.	

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (Initial Action Pty Ltd v Woollahra Municipal Council (2018)).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2.

The resulting development continues to improve the amenity and diversity of housing for the residents in a medium-density residential environment and the built form is compatible with established local character and amenity.

We maintain that the variation to the minimum lot size does not result in development that is incompatible with the environmental character of the locality. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to apply for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The nature of the proposal necessitates a variation to the lot size. The proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument SEPP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the minimum lot size development standard is both unreasonable and unnecessary and that there are sufficient environmental planning

grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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D28/26

2.2 Communal Open Space



Clause 4.6 Written Variation Request – Communal Open Space

21 Forsyth Street, Kingsford

"Change of use to co-living housing with alterations and additions"

3 March 2026

Tuesday Projects | ABN 49 577 661 195 | w: www.tuesdayprojects.com.au | m: 0468 535 194 | e: emma@tuesdayprojects.com.au

1. BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The proposal is in direct response to the growing housing needs of the Kingsford locality. The design is commensurate in scale, bulk, site coverage, and materiality to the existing approved dwelling and many of the other dwellings located in the immediate locality.

The proposed works include:

- **Change of use** from dwelling house to 8 x room co-living housing;
- **Partial demolition** of internal and external walls of the main building and outbuilding;
- **Construction** of new internal and external walls within the main building and outbuilding to create new rooms; and the
- **Retention** of most of the existing structures on site.

The proposal is of a reasonable scale and provides a high quality and durable co-living housing development which will assist to meet the high demand for spacious and functional housing in the Kingsford locality. The development is commensurate in scale and character with other properties in the streetscape, generally maintaining the existing approved building envelope. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

1.1 Clause 68(2)(d) of the State Environmental Planning Policy (Housing) 2021

Clause 68(2)(d) of the *State Environmental Planning Policy (Housing) 2021* requires at least 20% of the site area to be provided as communal open space, with minimum dimensions of 3m.

Less than 20% of the site is communal open space.

1.2 Variation Summary Table

Component	Requirement	Proposal	Variation %
Cl 68(2)(d) Communal Open Space	20% site area (67.44sqm)	7% of site area (23.8sqm)	65% (43.64sqm)

D28/26

Environmental Planning Grounds Relied Upon

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are outlined as follows.

The development represents a successfully functioning co-living building.
The proposed design features a functional and high quality development, with high levels of amenity for residents and visitors. There is adequate living area within each of the private rooms, or within the communal outdoor and two indoor living areas which are provided. The communal laundry and kitchen areas also provide the site with areas for communal socialisation and interaction, in addition to the outdoor communal area and private rooms.

Providing a communal open space measuring 20% of the site area would reduce the available area for housing and require the unnecessary demolition of existing built fabric
The existing building footprint does not lend itself to providing 20% site area as open space. If 20% were to be provided as outdoor communal space, numerous rooms would need to be demolished which reduces the availability of housing.

The location of the site near high quality open space provides residents with areas for socialisation and communal activities
There is a reasonable alternative communal outdoor area within parks located a few minutes walking distance from the site (such as Physics Lawn, Village Green or Shaw Reserve).

The non-compliance will have no material impacts on surrounding development.
The non-compliance does not have any physical impacts to the surrounding area. The building is generally retaining an envelope which is similar to the most recently approved development.

Orderly and economic use of land.
The social benefits of providing a development that improves the private rooms available for housing in the area should be given weight in the consideration of the variation request. Given the nature of alterations and additions, strict compliance with the standard would result in a site that underproviding housing supply, which is in conflict with the intended objectives of the R3 zone.

The proposal meets aims and objectives of key planning documents.
The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (detailed in the accompanying Statement of Environmental Effects). The proposed development also achieves the objects in Section 1.3 of the EPA Act, specifically the proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential facilities that better meet the needs and

significantly improve the living amenity opportunities of the residents (1.3(c)), and the proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

2. IS THE STANDARD A DEVELOPMENT STANDARD?

A development standard is defined in Section 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."

The communal open space control falls under subsection (m); therefore, the control is a development standard.

3. CLAUSE 4.6 OF THE STANDARD INSTRUMENT AND RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

The Standard Instrument SEPP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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.

In the case of Samadi v Council of the City of Sydney [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

> Clause 4.6 of SEPP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify

contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The NSW Department of Planning and Environment 'Guide to Varying Development Standards' was published in November 2023, with updated guidance and instruction regarding the requirements of a Clause 4.6 written variation request.

The Guide advised that consistency with zone objectives is no longer a matter for consideration within a Clause 4.6, as such an assessment is undertaken in accordance with Clause 4.15 of the NSW Environmental Planning and Assessment Act (EP&A Act) 1979. The requirements of Clause 4.15 of the EP&A Act have been considered in the assessment of this DA within the Statement of Environmental Effects (SEE) report prepared by Tuesday Projects, submitted alongside this DA.

Precondition 2 - Consistency with the objectives of the standard

There are no objectives relating specifically to the communal open space standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling boarding house development. The principles of the policy stipulated in clause 3 are:

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

The proposed co-living development is considered to be consistent with these principles. The proposed co-living housing will provide for greater housing diversity in a growing area, that will meet the needs of households in need of less expensive housing as co-living rooms are often inherently more affordable than renting a self-contained dwelling due to their generally smaller unit sizes, inability to be owner occupied, and shared cooking and laundry facilities. No existing affordable housing is being reduced, and the new proposal does not impact any adverse climate or environmental impacts.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation. By contrast, a compliant proposal would not allow the substantial upgrade in residential amenity in the manner intended.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of the case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term 'environmental planning grounds' is not defined and may be interpreted with wide scope.

For the reasons detailed throughout this report, it is considered there are sufficient environmental planning grounds to justify a variation to the communal open space development standard.

In the 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C, outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

The more recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the SEPP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five v Ashfield decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case …and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means (emphasis added):

> "the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

However, in the judgement of RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

> "… in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

This is consistent with a previous judgment in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, where on appeal of a commissioner's decision, the Court affirmed at [78] that "The request cannot 'adequately' address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters".

Accordingly, regarding the proposed variation to the communal open space requirements, it is considered that this Clause 4.6 request has in fact demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (Initial Action Pty Ltd v Woollahra Municipal Council (2018). Refer also to Section 5 below.

Additionally, under (Initial Action Pty Ltd v Woollahra Municipal Council (2018) at [24], the Chief Judge stated that "The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole". It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in Wehbe v Pittwater Council (2007).

The five tests under Wehbe are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are satisfied. Refer to discussion under Precondition 2. The objectives of the standard are concerned with the achievement of amenity for future residents. I conclude that the proposed communal open space size standard is generally appropriate as it results in a high amenity living arrangement, however, in light of suitable alternative off-site open space areas and the

	strong need for housing in this area, a variation is suitable for the subject development. The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliance is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	Not applicable — the development standards of communal open space cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality which are less connected to alternative open spaces. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate for the development standard.

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (Initial Action Pty Ltd v Woollahra Municipal Council (2018)).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2.

The resulting development continues to improve the amenity and diversity of housing for the residents in a medium-density residential environment and the built form is compatible with established local character and amenity.

We maintain that the variation to the communal open space requirements does not result in development that is incompatible with the environmental character of the locality. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to apply for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The nature of the proposal necessitates a variation to the communal open space requirements. The proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument SEPP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the minimum communal open space requirements is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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D28/26

2.3 Landscaped Area



Clause 4.6 Written Variation Request – Landscaped area

21 Forsyth Street, Kingsford

"Change of use to co-living housing with alterations and additions"

3 March 2026

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1. BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The proposal is in direct response to the growing housing needs of the Kingsford locality. The design is commensurate in scale, bulk, site coverage, and materiality to the existing approved dwelling and many of the other dwellings located in the immediate locality.

The proposed works include:

- **Change of use** from dwelling house to 8 x room co-living housing;
- **Partial demolition** of internal and external walls of the main building and outbuilding;
- **Construction** of new internal and external walls within the main building and outbuilding to create new rooms; and the
- **Retention** of most of the existing structures on site.

The proposal is of a reasonable scale and provides a high quality and durable co-living housing development which will assist to meet the high demand for spacious and functional housing in the Kingsford locality. The development is commensurate in scale and character with other properties in the streetscape, generally maintaining the existing approved building envelope. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

1.1 Clause 68(2)(f) of the State Environmental Planning Policy (Housing) 2021

Clause 68(2)(f) of the *State Environmental Planning Policy (Housing) 2021* states that for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument applies.

As the site is zoned R3 this paragraph applies. Chapter C2, Part 2.2.1(ii) of the RDCP states that for multi dwelling housing and attached dwellings, a minimum of 50% of the site area is to be landscaped open space. A minimum width of 2m of landscaped open space is to be provided.

Less than 50% of the site is landscaped area.

1.2 Variation Summary Table

Component	Requirement	Proposal	Variation %
Cl 68(2)(f) Landscaped area	50% site area (168.6sqm)	26% of site area (86.5sqm)	49% (82.1sqm)

Environmental Planning Grounds Relied Upon

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are outlined as follows.

Providing a landscaped area measuring 50% of the site area would reduce the available area for housing and require the unnecessary demolition of existing built fabric
The existing building footprint does not lend itself to providing 50% site area as landscaped area. If 50% were to be provided as landscaped area, numerous rooms would need to be demolished which reduces the availability of housing.

The non-compliance will have no material impacts on surrounding development.
The non-compliance does not have any physical impacts to the surrounding area. The proposed change of use and physical works does not increase the site coverage or reduce the landscaped area beyond the current site. As such, the variation is not responsible for any negative impact upon tree plantings, deep soil or other natural environmental feature.

The landscaping provided supports tree plantings and deep soil, and passive recreational activities
The current landscaped area supports a range of plantings and communal open space area for current and future residents. Council may condition the planting of new trees if deemed appropriate.

The proposal meets aims and objectives of key planning documents.
The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (detailed in the accompanying Statement of Environmental Effects). The proposed development also achieves the objects in Section 1.3 of the EPA Act, specifically the proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c)), and the proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

2. IS THE STANDARD A DEVELOPMENT STANDARD?

A development standard is defined in Section 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."

The landscaped area control falls under subsection (f); therefore, the control is a development standard.

3. CLAUSE 4.6 OF THE STANDARD INSTRUMENT AND RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

The Standard Instrument SEPP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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.

In the case of Samadi v Council of the City of Sydney [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

> Clause 4.6 of SEPP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify

contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The NSW Department of Planning and Environment 'Guide to Varying Development Standards' was published in November 2023, with updated guidance and instruction regarding the requirements of a Clause 4.6 written variation request.

The Guide advised that consistency with zone objectives is no longer a matter for consideration within a Clause 4.6, as such an assessment is undertaken in accordance with Clause 4.15 of the NSW Environmental Planning and Assessment Act (EP&A Act) 1979. The requirements of Clause 4.15 of the EP&A Act have been considered in the assessment of this DA within the Statement of Environmental Effects (SEE) report prepared by Tuesday Projects, submitted alongside this DA.

Precondition 2 - Consistency with the objectives of the standard

There are no objectives relating specifically to the landscaped area standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling boarding house development. The principles of the policy stipulated in clause 3 are:

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

The proposed co-living development is considered to be consistent with these principles. The proposed co-living housing will provide for greater housing diversity in a growing area, that will meet the needs of households in need of less expensive housing as co-living rooms are often inherently more affordable than renting a self-contained dwelling due to their generally smaller unit sizes, inability to be owner occupied, and shared living, cooking and laundry facilities. No existing affordable housing is being reduced, and the new proposal does not impact any adverse climate or environmental impacts.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation. By contrast, a compliant proposal would not allow the substantial upgrade in residential amenity in the manner intended.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of the case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term 'environmental planning grounds' is not defined and may be interpreted with wide scope.

For the reasons detailed throughout this report, it is considered there are sufficient environmental planning grounds to justify a variation to the landscaped area development standard.

In the 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C, outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

The more recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the SEPP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five v Ashfield decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case …and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means (emphasis added):

> "the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

However, in the judgement of RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

> "… in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

This is consistent with a previous judgment in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, where on appeal of a commissioner's decision, the Court affirmed at [78] that "The request cannot 'adequately' address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters".

Accordingly, regarding the proposed variation to the landscaped area requirements, it is considered that this Clause 4.6 request has in fact demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (Initial Action Pty Ltd v Woollahra Municipal Council (2018). Refer also to Section 5 below.

Additionally, under (Initial Action Pty Ltd v Woollahra Municipal Council (2018) at [24], the Chief Judge stated that "The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole". It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in Wehbe v Pittwater Council (2007).

The five tests under Wehbe are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are satisfied. Refer to discussion under Precondition 2. The objectives of the standard are concerned with the achievement of amenity for future residents. I conclude that the proposed landscaped area size standard is generally appropriate as it supports the natural environment, however, in light of the proposal not actually reducing deep soil or trees beyond the

	current site a variation is suitable for the subject development. The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliance is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	Not applicable — the development standards of landscaped area cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere where a reduction of deep soil and tree canopy is proposed. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate for the development standard.

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (Initial Action Pty Ltd v Woollahra Municipal Council (2018)).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2.

The resulting development continues to improve the amenity and diversity of housing for the residents in a medium-density residential environment and the built form is compatible with established local character and amenity.

We maintain that the variation to the landscaped area requirements does not result in development that is incompatible with the environmental character of the locality. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to apply for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The nature of the proposal necessitates a variation to the landscaped area requirements. The proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument SEPP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the minimum landscaped area requirements is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



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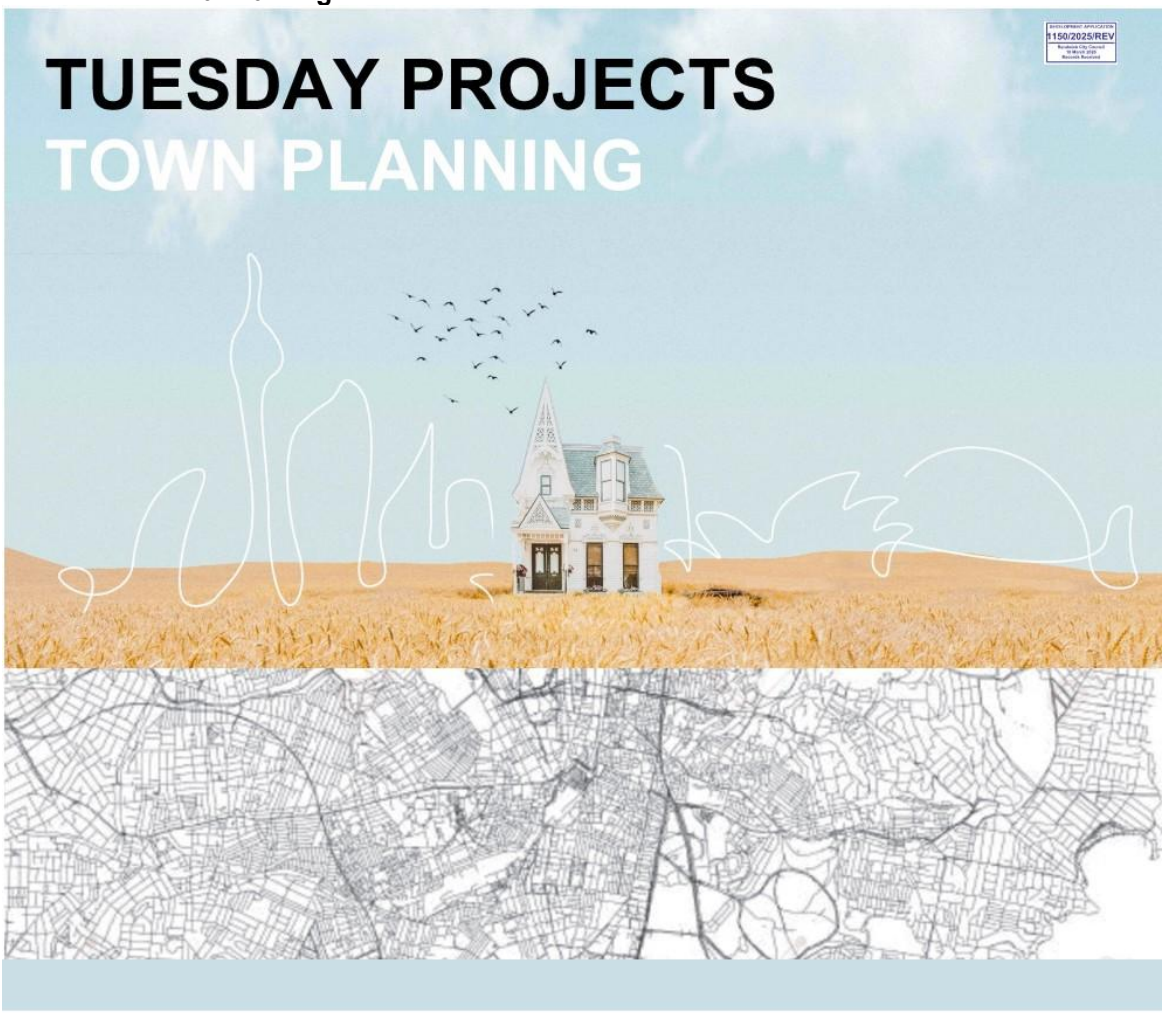
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D28/26

2.4 Car Parking



Clause 4.6 Written Variation Request – Car parking

21 Forsyth Street, Kingsford

"Change of use to co-living housing with alterations and additions"

3 March 2026

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1. BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The proposal is in direct response to the growing housing needs of the Kingsford locality. The design is commensurate in scale, bulk, site coverage, and materiality to the existing approved dwelling and many of the other dwellings located in the immediate locality.

The proposed works include:

- **Change of use** from dwelling house to 8 x room co-living housing;
- **Partial demolition** of internal and external walls of the main building and outbuilding;
- **Construction** of new internal and external walls within the main building and outbuilding to create new rooms; and the
- **Retention** of most of the existing structures on site.

The proposal is of a reasonable scale and provides a high quality and durable co-living housing development which will assist to meet the high demand for spacious and functional housing in the Kingsford locality. The development is commensurate in scale and character with other properties in the streetscape, generally maintaining the existing approved building envelope. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

1.1 Clause 68(2)(e) of the State Environmental Planning Policy (Housing) 2021

Clause 68(2)(e) of the *State Environmental Planning Policy (Housing) 2021* states that unless a relevant planning instrument specifies a lower number, development on land in an accessible area requires at least 0.2 parking spaces for each private room.

As 8 rooms are proposed, 1.6 parking spaces are proposed. Rounded up, this requires 2 on-site parking spaces.

One on-site parking space is proposed.

1.2 Variation Summary Table

Component	Requirement	Proposal	Variation %
Cl 68(2)(e) Car parking	2 on-site parking spaces.	1 on-site parking space.	50% (1 parking space)

Environmental Planning Grounds Relied Upon

The term 'environmental planning grounds' is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are outlined as follows.

Providing two car parking spaces would reduce the available area for landscaping and housing, and require the unnecessary demolition of existing built fabric and deep soil

The existing building footprint does not lend itself to providing 2 x on-site car parking spaces. If 2 spaces were to be provided as car parking, numerous rooms and landscaped area (including communal outdoor living space) would need to be demolished which reduces the availability of housing, lawn and tree plantings.

There is no reduction of on-site car parking compared to the current site

The current site provides one on-site car parking space. No further reduction is proposed, adhering to the character of the current site.

The reduced parking assist to provide inherently more affordable accommodation

The provision of more on-site parking will increase the market rent which can be charged. By limiting parking to a single space, most bedrooms will be rented as rooms alone and therefore yield a lower rent.

The proposal is not likely to result in any significant increase in demand for parking

The site is extremely well located, being within a 5 minutes walking distance to a light rail stop and bus stops. Residents of the future co-living housing are anticipated to attend the nearby UNSW campus and work in the local area, reducing the need for a private vehicle.

Further, the 8-bedroom co-living building is capable of accommodating the same number of occupants as an 8-bedroom dwelling house would. Therefore, the variation is not noticeable compared to a CDC-compliant dwelling house design with regards to population density.

The proposal meets aims and objectives of key planning documents.

The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (detailed in the accompanying Statement of Environmental Effects). The proposed development also achieves the objects in Section 1.3 of the EPA Act, specifically the proposal promotes the orderly and economic use and development of land through the proposed works provide additional residential facilities that better meet the needs and significantly improve the living amenity opportunities of the residents (1.3(c)), and the proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

2. IS THE STANDARD A DEVELOPMENT STANDARD?

A development standard is defined in Section 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."

The car parking control falls under subsection (g); therefore, the control is a development standard.

3. CLAUSE 4.6 OF THE STANDARD INSTRUMENT AND RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

The Standard Instrument SEPP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

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.

In the case of Samadi v Council of the City of Sydney [2014] NSWLEC 1199.

Paragraph 27 of the judgement states: -

> Clause 4.6 of SEPP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify

contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The NSW Department of Planning and Environment 'Guide to Varying Development Standards' was published in November 2023, with updated guidance and instruction regarding the requirements of a Clause 4.6 written variation request.

The Guide advised that consistency with zone objectives is no longer a matter for consideration within a Clause 4.6, as such an assessment is undertaken in accordance with Clause 4.15 of the NSW Environmental Planning and Assessment Act (EP&A Act) 1979. The requirements of Clause 4.15 of the EP&A Act have been considered in the assessment of this DA within the Statement of Environmental Effects (SEE) report prepared by Tuesday Projects, submitted alongside this DA.

Precondition 2 - Consistency with the objectives of the standard

There are no objectives relating specifically to the car parking standard, however, any underlying objective, in this case the principles of the Housing SEPP policy, would be considered relevant in terms of enabling boarding house development. The principles of the policy stipulated in clause 3 are:

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

The proposed co-living development is considered to be consistent with these principles. The proposed co-living housing will provide for greater housing diversity in a growing area, that will meet the needs of households in need of less expensive housing as co-living rooms are often inherently more affordable than renting a self-contained dwelling due to their generally smaller unit sizes, inability to be owner occupied, and shared living, cooking and laundry facilities. No existing affordable housing is being reduced, and the new proposal does not impact any adverse climate or environmental impacts.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted. Consequently, I conclude that strict compliance with the development standard is unreasonable and unnecessary.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is the onus of the Council to form an opinion of satisfaction that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

For the reasons detailed in this request, I am of the opinion that Council may form the necessary opinion of satisfaction that there are sufficient environmental planning grounds to support a variation. By contrast, a compliant proposal would not allow the substantial upgrade in residential amenity in the manner intended.

Further, given that the development satisfies the objectives of the zone and the development standard, numerical compliance is considered unreasonable and unnecessary in the circumstances of the case.

Precondition 4 – To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

According to recent caselaw, Council is required to be satisfied that there are sufficient environmental planning grounds to support a variation to a development standard. Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and need not be site specific. The term 'environmental planning grounds' is not defined and may be interpreted with wide scope.

For the reasons detailed throughout this report, it is considered there are sufficient environmental planning grounds to justify a variation to the car parking development standard.

In the 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C, outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case-by-case basis and is for the consent authority to determine for itself.

The more recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the SEPP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five v Ashfield decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case …and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means (emphasis added):

> "the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

However, in the judgement of RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130, there was further clarification of the construction of Clause 4.6. The Court asserted that:-

> "… in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

This is consistent with a previous judgment in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, where on appeal of a commissioner's decision, the Court affirmed at [78] that "The request cannot 'adequately' address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters".

Accordingly, regarding the proposed variation to the car parking requirements, it is considered that this Clause 4.6 request has in fact demonstrated sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

There is also no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (Initial Action Pty Ltd v Woollahra Municipal Council (2018). Refer also to Section 5 below.

Additionally, under (Initial Action Pty Ltd v Woollahra Municipal Council (2018) at [24], the Chief Judge stated that "The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole". It is considered that this request is consistent with this aspect of the judgment as it does not rely on promotion of the benefits of the development.

According to the relevant case law, there are other common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in Wehbe v Pittwater Council (2007).

The five tests under Wehbe are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

Test	Comments
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	The objectives of the development standard are satisfied. Refer to discussion under Precondition 2. The objectives of the standard are concerned with the achievement of amenity for future residents. I conclude that the proposed car parking size standard is generally appropriate as it does not reduce parking compared to current conditions.

	The application demonstrates that objectives of the standard are achieved through the qualitative design outcomes rather than a strict numerical approach.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development however the objective is achieved and strict compliance is unreasonable and unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	Not applicable — the development standards of car parking cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere where a reduction of parking compared to the current site is proposed. The development standard has not been abandoned.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The zoning of the land is appropriate for the development standard.

5. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. (Initial Action Pty Ltd v Woollahra Municipal Council (2018)).

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the discussion concerning objectives for development within the zone in which the development is proposed to be carried out. The objectives and comments are provided under Precondition 2.

The resulting development continues to improve the amenity and diversity of housing for the residents in a medium-density residential environment and the built form is compatible with established local character and amenity.

We maintain that the variation to the car parking requirements does not result in development that is incompatible with the environmental character of the locality. The proposal demonstrates harmony with the relevant zone objectives, the objectives of the standard and satisfies the public interest test.

6. CONCLUSION

The purpose of the application is to apply for the change of use to co-living housing with alterations and additions at 21 Forsyth Street, Kingsford. The nature of the proposal necessitates a variation to the car parking requirements. The proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument SEPP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the minimum car parking requirements is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



Emma Rogerson

Specialist Town Planner

Master of Urbanism (Urban and Regional Planning) (USYD)

Bachelor of Architecture and Environments (USYD)

Planning Institute of Australia (MPIA)



Responsible officer: Thomas Awford, Environmental Planning Officer

File Reference: DA/1150/2025/REV

Development Application Report No. D29/26

Subject: 171 Arden Street, Coogee (DA/20/2026)

Executive Summary

Proposal:	Amending DA to DA/525/2022 for alterations to an existing backpacker's accommodation, including internal layout changes and reconfiguration works resulting a reduction to the number of accommodation rooms to 15 (90 occupants), ground level communal areas and changes to external openings and façade presentation.
Ward:	North Ward
Applicant:	J Spencer
Owner:	Mr D C Harris
Cost of works:	$3,477,023
Reason for referral:	The development contravenes the development standard for floor space ratio by more than 10%

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/20/2026 for Amending DA to DA/525/2022 for alterations to an existing backpacker's accommodation, including internal layout changes and reconfiguration works resulting a reduction to the number of accommodation rooms to 15 (90 occupants), ground level communal areas and changes to external openings and façade presentation, at No. 171 Arden Street, Coogee, for the following reasons:

1. 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 B: General Controls
        i. Section B9 Management Plan
        ii. Section D10 Backpackers Accommodation – Plan of Management

2. Pursuant to section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the application has not adequately demonstrated that the proposed development is appropriately characterised as alterations and additions, having regard to the extent of demolition proposed and the absence of a detailed assessment against demolition planning principles, including those established in *Coorey v Municipality of Hunters Hill*.

3. Pursuant to section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided to demonstrate that the existing external walls can be retained, having regard to the extent of demolition proposed to the floors, roof and walls, and the absence of a Structural Engineering Report and supporting concept-level structural diagrams.

4. Pursuant to section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the submitted Plan of Management is inadequate, as it contains inaccuracies, omissions and inconsistencies, including erroneous date references, the outdated maximum capacity for proposed rooms, the absence of requirements for the manager’s sleeping room and the reference to the outdated acoustic report.

5. Pursuant to section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, a full and robust assessment of the proposal cannot be completed as insufficient information has been submitted relating to extent of demolition, structural engineering report and Plan of Management.

6. 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 non-compliances with relevant planning controls, and the objections raised in the public submissions.

Attachment/s:

Nil



1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%

The proposal seeks development consent as amending DA to DA/525/2022 for alterations to an existing backpacker's accommodation, including internal layout changes and reconfiguration works resulting in a reduction to the number of accommodation rooms to 15 (90 occupants), ground level communal areas and changes to external openings and façade presentation.

Council notes that on 25 March 2026, the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the Council's deemed refusal of the development application.

The key issues associated with the proposal relate to the extent of demolition, structural adequacy, acoustic privacy and insufficient information.

The proposal is recommended for refusal for the reasons outlined in the recommendation section.

2. Site Description and Locality

The subject site is known as 171 Arden Street, Coogee and is legally described as Lot 1 in DP 949449. The site is 265.5m^2 in area and is rectangular in shape. The site has a 9.14m frontage to Arden Street to the west. The topography of the site falls across the frontage from north to south by approximately 0.8m.

The site is currently occupied by a two (2) storey backpackers' accommodation facility, known as the Coogee Beach House, which comprises a total of 36 beds. There is an existing approval under DA/525/2022 for alterations and additions to existing backpackers' accommodation including internal reconfiguration, changes to front façade and new second floor addition.

Surrounding development comprises a mix of residential and commercial uses and ranges in height from two (2) to four (4) storeys.



Figure 1: Existing development at subject site *(Source: Council officer)*

3. Relevant history

- DA/18/2004 was approved on 29 July 2005 for alterations and additions to an existing private hotel and conversion to a backpacker hostel.
- DA/427/2011 was approved on 30 November 2011 for internal alterations to existing backpacker hostel and increase hostel beds from 24 to 44.
- PL/57/2021 A Pre-Lodgement Meeting was held on 21 October 2021 relating to the proposed addition of a second floor to existing backpacker's accommodation known as the Coogee Beach House, containing 9 additional rooms (53 in total), and associated works.
- DA/525/2022 was approved on 1 October 2024 for alterations and additions to existing backpackers' accommodation including internal reconfiguration, changes to front façade and new second floor addition.

4. Proposal

The proposal seeks development consent for an amending DA to DA/525/2022 for alterations to an existing backpacker's accommodation, including internal layout changes and reconfiguration works resulting a reduction to the number of accommodation rooms to 15 (90 occupants), ground level communal areas and changes to external openings and façade presentation. In particular, the proposed works include:

Ground Floor

- Water meter location and planter height adjusted
- Fire sprinkler booster assembly location and planter amended to front western elevation
- Ground floor internal layout amended resulting in foyer, reception, under stairs storage, access stairs, communal area, kitchen, dining, fire stairs, accessible bathroom, laundry, 1 room for 2 guests, and existing garage
- New floor structure
- New slab and externals walls to garage
- Additional bins proposed within garage
- Number of rainwater tanks reduced. Size of rainwater tanks increased to keep same level of capacity as approved. Hot water unit added.

First Floor

- First floor internal layout amended resulting in 8 rooms accommodating 50 guests, four (4) bathrooms, service cupboard, and two (2) fire stairs
- New floor structure

Second Floor

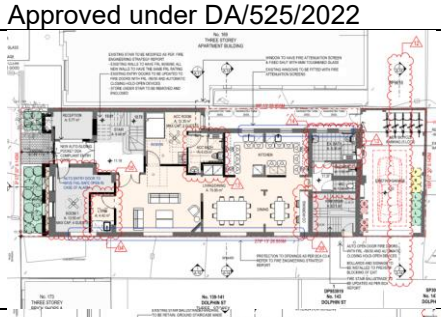
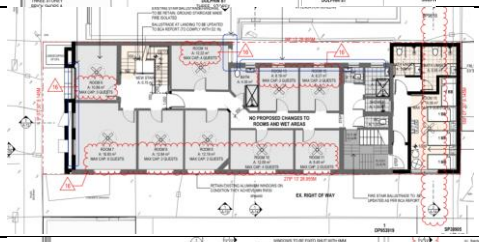
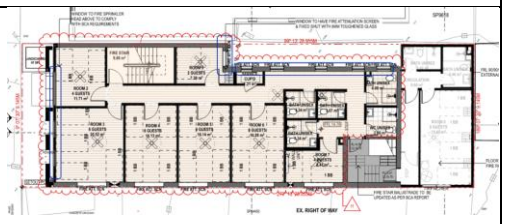
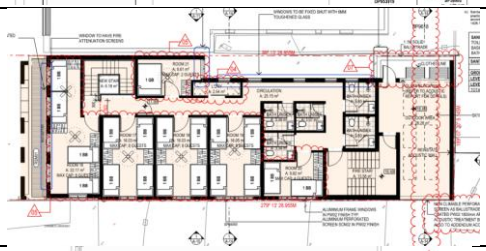
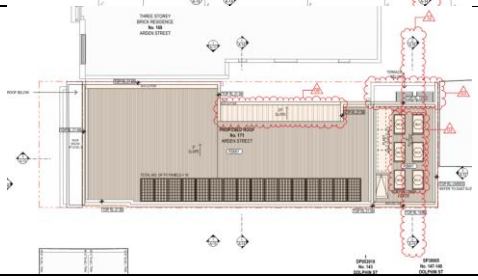
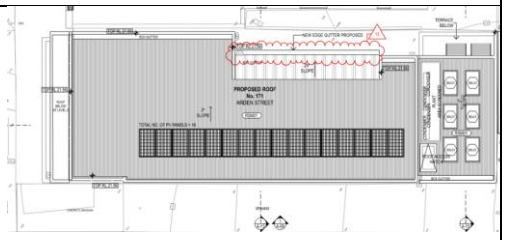
- Level 2 internal layout amended to suit lower layout and new fire stairs, services and louvres to the approved windows
- Amended floor plan resulting in 6 rooms accommodating 38 guests, laundry, five (5) bathrooms, and outdoor area to the east of the building

Roof Plan

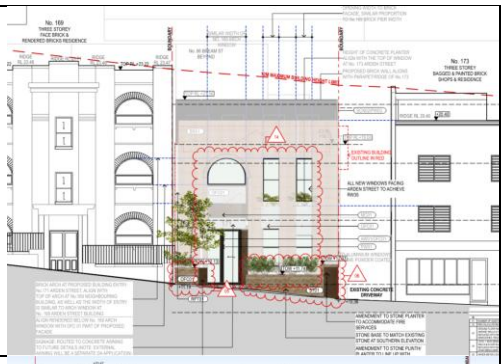
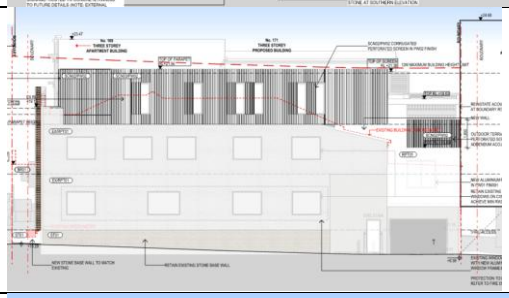
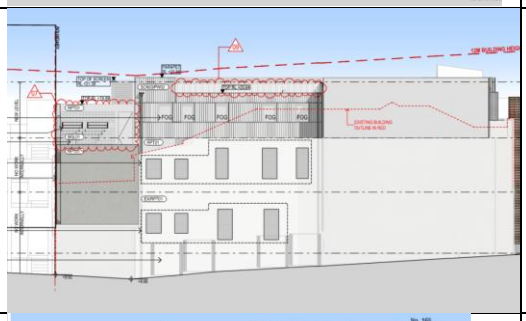
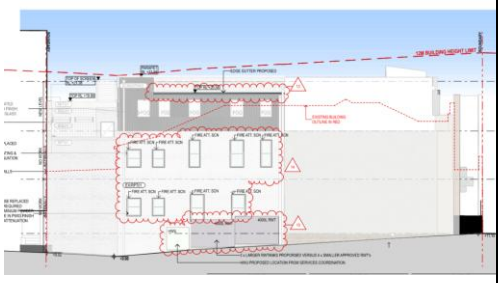
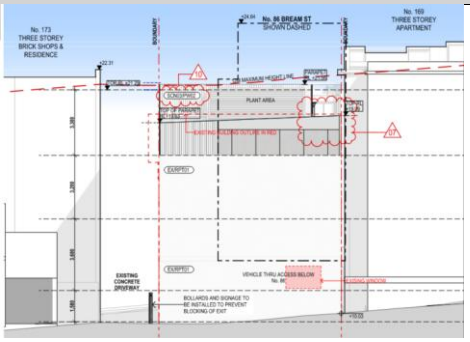
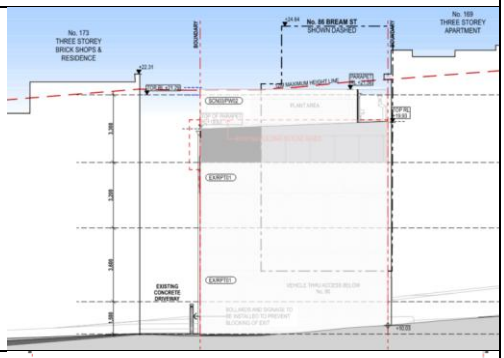
- Approved box gutter changed to edge gutter

Fire Safety Upgrades

- Fire egress discharge on Ground Floor from the non-fire isolated stair is external and reduces exposure to internal fire
- The number of doors opening into the exit on Level 1 and 2 is reduced to one, reducing the potential ingress points of fire and smoke into the stairway
- Internal fire rated walls and floors can be constructed fully in accordance with the tested systems and in a consistent manner
- Egress pinch points in the corridor are resolved.
- Proposed fire shutter behind perforated screen to opening
- Existing windows replaced with new windows to achieve required acoustic ratings and protection to openings to fire engineers report

	Approved under DA/525/2022	Proposed
Ground Floor		
First Floor		
Level 2		
Roof		

D29/26

West Elevation		
South Elevation		
North Elevation		
East Elevation		
Long Section		

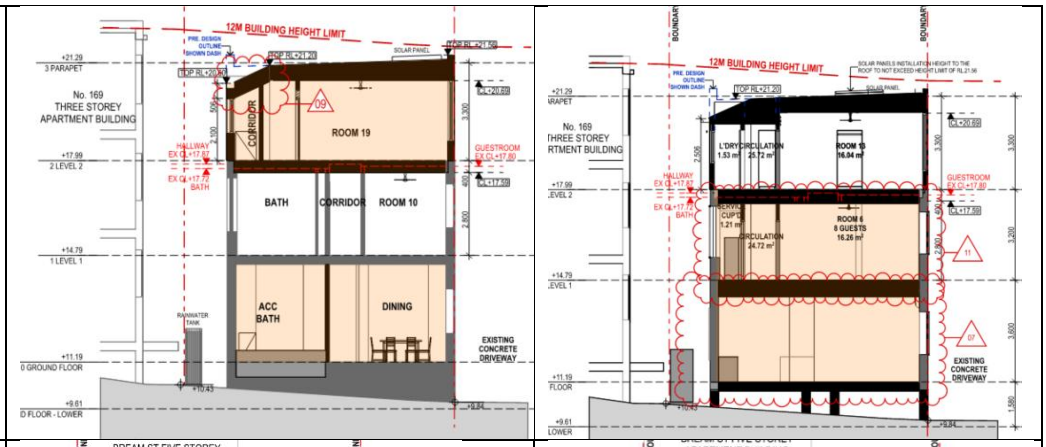
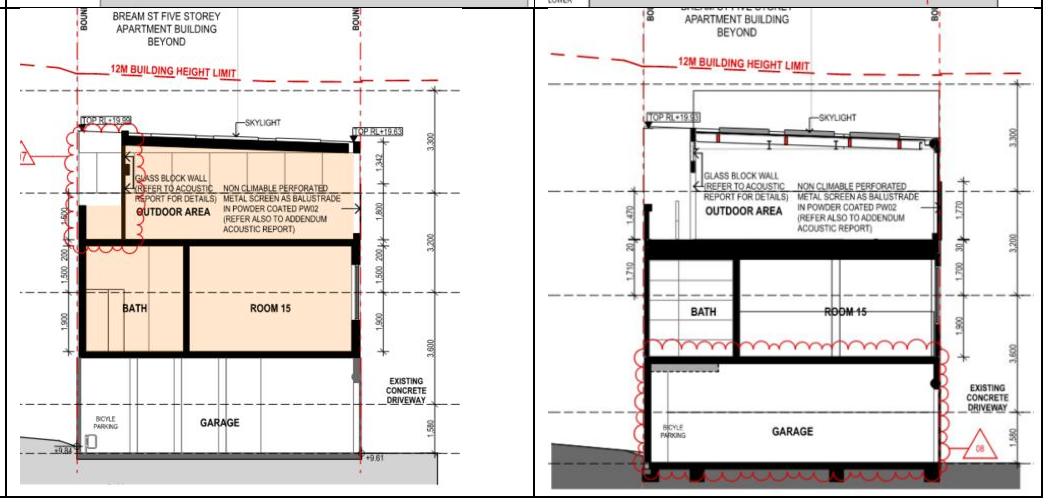
Cross Section 1	
Cross Section 2	

Figure 2: Approved Plans under DA/525/2022 and proposed plans *(Source: Mostaghim)*

5. Notification

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

- 4/169 Arden Street, Coogee; and
- 6/169 Arden Street, Coogee

Issue	Comment
Issues associated with the previous application, including procedural history, lack of transparency, loss of natural light, loss of privacy and noise exposure	The concerns about the previous court approval are noted, however are not relevant to the subject application.
Impact on light, privacy and amenity	There are no changes proposed to the building envelope, height, bulk and scale and window openings. In this regard, it is satisfied that the proposal does not have greater impacts on light, privacy and amenity on neighbouring properties.
Greater noise associated with the increased capacity from 79 to 90 guests	Refer to discussion at Key Issues section of this report.
Non-compliance with FSR – beyond the extent to which the previous approval allowed	Refer to discussion at Clause 4.6 section of this report.
The proposal entails a full demolition and redevelopment rather than alterations and additions.	Refer to discussion at Key Issues section of this report.

Issue	Comment
Longer period of demolition and construction – greater inconvenience and nuisance	It is noted that construction-related impacts are temporary in nature and must be balanced against the long-term benefits of the development and its consistency with planning controls. Subject to the implementation of appropriate mitigation measures and compliance with Council requirements, the proposed works are not expected to result in unreasonable or unacceptable impacts on the amenity of neighbouring properties. As such, the short-term nature of construction impacts are not considered to result in an unreasonable level of nuisance.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policies

SEPP (Resilience and Hazards) 2021

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 backpackers' accommodation facility. Noting that the site has historically been used for backpackers' accommodation purposes, the possibility of contamination is unlikely, and the site is considered suitable for the proposed development.

SEPP (Housing) 2021 – Chapter 4 Design of Residential Apartment Development

The proposed development is for alterations and additions to an existing backpackers' accommodation facility, which is a type of tourist and visitor accommodation. Chapter 4 of the Housing SEPP does not apply to the proposal. It is noted that the previous application DA/525/2022 was referred to the Design Excellence Advisory Panel (DEAP) for comments. Given the subject application does not involve significant changes to the building envelope, scale and built form, or facades, referral to DEAP was not considered necessary under the subject amending DA.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Business E1 Local Centre under Randwick Local Environmental Plan 2012 and the proposal, being for alterations and additions to a backpackers' accommodation facility, 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 affordable accommodation for visitors, encourage investment in local tourism and retail/commercial activities, contribute to a vibrant and active local centre, and facilitate a high standard of urban design. The proposal has been designed to minimise the impact of the development and protect the amenity of neighbouring residents.

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

Description	Council Standard	Approved under DA/525/2022	Proposed	Compliance* (Yes/No/NA)
Floor Space Ratio (Maximum)	1.5:1 (398.25m^2)	1.96:1 (520m^2)	1.94:1 (514m^2)	No
Height of Building (Maximum)	12m	12m (RL 21.65)	11.95m (RL 21.56) – Unchanged from the approved building height	Yes

* If no, refer to Clause 4.6 discussion under Key Issues

6.2.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the floor space ratio development standard is discussed in Section 7.

6.2.2. Clause 5.10 - Heritage conservation

The subject site is not identified as Heritage Item and is not located within a Heritage Conservation Area. However, the site is in proximity to two (2) local Heritage Items located at No. 182 Arden Street *("Juvina", Art Deco residential flat building*) and No. 184 Arden Street *("Beach Court", Neo-classical residential flat building*).

The proposal was referred to Council's Heritage Planner who didn't object to the application. Refer to discussion by Council's Heritage Planner at **Appendix 1**.

6.2.3. Clause 6.7 - Foreshore scenic protection area

The subject site is located in the Foreshore Scenic Protection Area. Clause 6.7 of RLEP 2012 aims to ensure that development is designed to minimise its visual impact upon the foreshore, including views to and from the coast, and that it contributes to the scenic quality of the coastal foreshore.

The proposal is limited to internal changes and does not involve changes to the approved three (3) storey building envelope. In this regard, the proposed building will remain compatible with the surrounding development and not be visually prominent as viewed from the coastline or public foreshore areas.

6.2.4. Clause 6.22 – Development in local centres

The site is located within the E1 Local Centre zone. The proposed development is permissible within the zone and is consistent with the objectives of the E1 Local Centre zone, which encourage a mix of uses that support the vitality and function of local centres.

The proposed development will not result in any increased amenity impacts, nor will it introduce new amenity impacts when compared with the development approved under DA/525/2022. The proposal will improve aural privacy and noise management outcomes relative to both the existing building and the previously approved development through the installation of acoustically appropriate window treatments and the implementation of a site-specific Plan of Management (subject to additional information refinements).

The desired future character of the Coogee Local Centre is characterised by mixed-use development, with surrounding buildings generally being of a greater height and scale than the subject proposal. In this context, the proposal is considered compatible with the established and desired built form character of the locality. The continued use of the building for backpacker accommodation is appropriate within the local centre context, as it contributes to diversity in accommodation types, supports tourism, and attracts visitors who are likely to utilise public transport and patronise existing commercial and retail businesses within the centre.

The proposal will not adversely affect the hierarchy of centres within the Local Government Area.

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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	Approved under DA/525/2022	Approved variation under DA/525/2022	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	1.5:1 (398.25m^2)	1.96:1 (520m^2)	127.75m^2 / 32%	1.94:1 (514m^2)	115.75m^2	29%

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

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

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

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

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

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

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

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

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

   Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision** in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether the applicant's written

request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and

2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

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

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

7.1. Exception to the 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 proposal is considered to provide a compatible built form with regards to the desired future character, particularly as the resultant height and built form is the same as that approved with DA/525/2002.*

The built form and scale is also consistent with the existing height and built form on neighbouring properties to the north, west and south of the site.

The subject site is zoned E1 Local Centre which anticipates three storey street wall buildings which are sympathetic to nearby heritage buildings and provide a variety of land uses that support the vitality and viability of the centre. The proposal is designed to ensure that the floor space is contained within the building envelope approved with DA/525/2002, with a compliant height.

In preparing the application, the project architect has had careful regard to the existing and approved built form and massing which has provided clear direction as to the site's capacity to accommodate the approved GFA.

Notwithstanding the permissible FSR (1.5:1), the existing building is clearly dwarfed by the existing built form as illustrated at Figure 3 below.

The GFA of the proposal is 6m² less than that approved for DA/525/2022.

For these reasons, the size and scale of the proposal is considered to be compatible with the desired future character of the locality, including the scale and size of existing heritage listed buildings on the opposite side of Arden Street, which are likely to at least remain at a height and scale which exceeds that of the proposal."

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

"*The articulation of the building remains unchanged compared to that approved with DA/525/2022.*

Backpacker accommodation is not a BASIX development and is not subject to minimum environmental and energy targets set by State Environmental Planning Policy (Sustainable Buildings) 2022. Notwithstanding, it is acknowledged that environmental performance and responsible management of energy consumption is an object of the EP&A Act.

The letter by Core Engineering dated 16 December 2025, submitted with the application, indicates there are no matters of non-compliance with the Building Code of Australia which includes minimum performance standards for insulation, materials selection, natural light and ventilation.

For these reasons, the proposal is consistent with Objective (b) despite the numeric 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 site is not a Heritage Item or a Contributory Building, and the site is not located within a Heritage Conservation Area. However, located on the opposite side of Arden Street is No. 182 Arden Street, an Art deco residential flat building known as 'Juvina' and identified as an item of local heritage significance (Item No. I45). Adjacent to Juvina at No. 184 Arden Street is 'Beach Court', a Neo-classical residential flat building which is also an item of local heritage significance (Item No. I46).*

The proposed development is located on the opposite side of Arden Street which is approximately 20m from the heritage items and will not impact on the scale or character of the heritage items. The resultant built form notwithstanding the breach in FSR is compatible with the scale and character of the nearby heritage items. The landscaping within the front of the building will enhance the streetscape character and will improve the site entry for visitors to the accommodation. The building design incorporates architectural elements that are sympathetic to the heritage items nearby and will ensure the built form is entirely compatible with the surrounding context.
Therefore objective (c) is achieved and the proposal is compatible the scale and character of the closest heritage items."

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

"*It is considered that the proposal has no new or additional impacts in comparison to the approved DA/525/2022. Despite non-compliance with FSR, the proposal will not unreasonably compromise the use and enjoyment of neighbouring properties in terms of privacy, daylight access or views.*

In terms of privacy, the proposed development has been designed to minimise privacy impacts on adjoining properties through careful placement and orientation of windows as approved with DA/525/2022, with additional improvements to the acoustic attenuation of window design and installation. It is considered that the proposed development will not result in any material loss of privacy when compared to a building with a compliant FSR.

With regards to solar access, the proposed building does not change the 3D building envelope approved with DA/525/2002 which was found to have acceptable impacts.

Potential view loss has been analysed with DA/525/2022 and is repeated below. The proposal will enhance the existing streetscape through the building renovation and expansion so that it will sit comfortably on Arden Street and is entirely compatible with the scale of the surrounding developments.

The proposed building envelope is compatible with neighbouring and nearby developments with similar characteristics as the subject site. The proposed gross floor area is 6m² less than that approved with DA/525/2002.

Accordingly, the proposal is consistent with objective (d), despite the FSR breach."

Assessing officer's comment: The proposal is considered to respond appropriately to the context of the site. 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 because the relevant objectives of the standard are still achieved.

It is considered that the proposal is not inconsistent with the objectives of the standard as the size and scale of the proposal is compatible with the character of the locality. The proposed floor area is less than what has already been approved under DA/525/2022 and is contained within a compliant building height.

The proposed development will not result in additional adverse impacts on adjoining properties in terms of its perceived bulk and scale, privacy, solar access, and view sharing. It is acknowledged that a further reduction in gross floor area to achieve a compliant design would not necessarily result in improved amenity outcomes for neighbouring properties.

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

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

1. *"The proposed non-compliance is a smaller variation and lesser FSR than that found to be acceptable and approved with DA/525/2022.*
2. *The changes proposed to the existing and approved hostel are sought to facilitate significant improvements to the quality, safety and layout of the rooms and amenities and does not contribute to any material impact, as a consequence of the Variation, on the amenity or the environmental values of surrounding properties, the amenity of future building occupants, the amenity of neighbouring properties and the character of the locality.*
3. *Acoustic walls and a roof to the outdoor terrace were approved with DA/525/2002 to achieve suitable noise attenuation in combination with limitations as to how the space is utilised as set out in the approved Plan of Management. This application also proposes changes to the design and construction detail of the window and door openings to improve noise*

attenuation and fire safety. This application also includes specific design detail for fire safety and essential building services which are improvements upon the previous consent DA/525/2022. None of these further improvements add further to the approved GFA (and in fact decrease GFA by 6m²).

4. *The non-compliance represents a maximum breach of 115.75m² which may appear to be numerically significant but in the context of its surroundings it will still remain one of the smaller buildings in the immediate neighbourhood. The breach is contained within a building footprint approved with DA/525/2002 and has already been found consistent with the built form of neighbouring development as part of the assessment and determination of DA/525/2002.*
5. *The proposed FSR will not result in a building that appears noticeably larger than that which is anticipated by the controls or by what exists in the immediate locality and is likely to persist into the future. Importantly while the FSR exceeds the maximum permissible, the building height remains compliant and mostly below the 12m height maximum in accordance with the height of building development standard. The proposed FSR is not concentrated in a specific area of the site and is instead, dispersed across the site allowing the proposed development to be in keeping with the character of the area and the objectives for the control.*
6. *The subject development results in an acceptable bulk, scale and form that reflects the existing character of development in the local centre zone. The additional FSR is contained within the maximum building height and will not appear as visually obtrusive from the public domain. The additional FSR will be contained within a three-storey built form, which is consistent with, and recessive in comparison to, neighbouring buildings. The proposal is compatible with the established setbacks along Arden Street and contributes to the street wall buildings by adding an additional floor level filling a gap in the street scape. Refer to Figure 4 below which shows the streetscape fit of the proposal.*
7. *The proposed FSR variation does not bring with it a form of development on the site that is noticeably larger or incompatible with development form that is anticipated by the controls, or inconsistent with the character for the locality generally. As identified, the additional FSR is contained within a well-designed contemporary built form and has been successfully integrated throughout the building envelope. The primary façade of the development provides an appropriate bulk and scale which is compatible with development which can be reasonably anticipated by the E1 zoning and applicable planning controls.*
8. *The proposed building reflects a similar setback to neighbouring development characteristic of the Local Centre zoning, noting that a small landscaped area within the front setback as approved with DA/525/2022 has been retained and adjusted to accommodate essential services metering and fire hydrant. The landscaping enhances the accessible, styled entry and reception area improving the existing interface with the streetscape.*
9. *A significant portion of the gross floor area (28sqm) is attributable to the approved enclosed outdoor terrace with acoustic walls and roof to create an appropriate communal external space on Level 2. This is a significant improvement upon the current outdoor open space at the site. It will ensure that the amenity of future guests and neighbouring properties is improved and protected through a superior design, acoustic treatment and a plan of management for its use. The use of the outdoor area will be limited to between 10pm and 7am Monday to Saturday and 10pm and 8am on Sunday and public holidays and is limited to the number of occupants who can use the space at any one time (28 persons). These management measures will minimise impacts from use of the space and were supported in the approval of DA/525/2002. It would be unreasonable to detract from the quality and amenity of the approved building to delete the outdoor terrace space for the sake of reducing the numeric exceedance to FSR.*
10. *It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically, the extent of non-compliance with the FSR development standard:*
    (a) creates no significant overshadowing when compared to the approved DA/525/2022 or compared to a compliant FSR, particularly as it still remains one of the smallest buildings within the locality. That is, the height of the proposal is compliant with the height standard and reduction in the building envelope to reduce FSR would not necessarily provide any benefit for solar impacts.
    (b) The FSR breach does not result in any significant additional privacy impacts. The communal living and dining areas for the hostel are retained at ground level. The approved

outdoor terrace sand Level 2 remains as approved with DA/525/2002. Acoustic impacts will be improved by the proposal through acoustic attenuation of the window openings. The ability to improve acoustic outcomes is a direct result of the provision of additional FSR on the site; and
(c) The additional FSR does not create any significant additional view loss in comparison to the approved DA/525/2022. The view impact analysis of DA/525/2002 is included below as reproduced from the Clause 4.6 variation request approved with DA/525/2002.

11. *The massing of the building will be compatible with the character of the existing and emerging surrounding development. The proposed building will comfortably relate to the character of the locality and has incorporated superior planning outcomes to ensure the scale of development with regards to FSR and height is considered to be appropriate in the locality. The subject site and proposed 3D building envelope is currently much smaller than the neighbouring sites and buildings and there is opportunity to develop the site and maintain a built form that is compatible and in keeping with its surrounds. As noted, even with the additional floor level approved with DA/525/2002 and non-compliant FSR the building will still remain smaller than most of the neighbouring buildings.*
12. *The social benefits of providing additional and diverse budget accommodation within a highly sought after location should be given substantial weight in the consideration of the variation request. The proposed development achieves an environmental planning outcome by providing additional guest rooms without having an adverse impact on the amenity of adjoining properties and achieving compatibility with the character and built form of the locality. Rejection of this request and this application will result in the implementation of DA/525/2022 which has an approved GFA exceeding the proposal."*

Assessing officer's comment: The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the FSR development standard. The overall height, bulk, and scale of the proposal is compatible with surrounding development. Specifically, the proposed number of storeys (3) is consistent with directly adjoining properties. The floor area as proposed will not result in any additional adverse impacts to adjoining properties relative to perceived bulk and scale, privacy, solar access, or view sharing and is less than what has already been approved under DA/525/2022.

As discussed above, the proposal achieves the objectives of the FSR development standard pursuant to clause 4.4 of RLEP 2012. The size and scale of the proposal are compatible with the existing and desired future character of the locality. On this basis, there are sufficient grounds to justify the contravention of 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 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant character 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 issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Extent of Demolition

Concerns are raised regarding the extent of demolition proposed and the manner in which the development has been characterised as "alterations and additions." On the documentation provided, it is not evident that the scope and scale of demolition associated with the proposal has been adequately examined in the context of established planning principles relevant to demolition and rebuilding.

In this regard, the submitted documentation does not sufficiently demonstrate that the proposed works are properly characterised as alterations and additions, as opposed to works that may exceed what is ordinarily contemplated by that description. The extent of removal and replacement of existing building fabric appears substantial and warrants closer scrutiny, particularly having regard to the principles established in *Coorey v Municipality of Hunters Hill*, which require consideration of

whether the remaining structure retains sufficient physical and functional continuity following demolition works.

Accordingly, a revised Statement of Environmental Effects was required to include a specific and reasoned assessment against the demolition planning principle. This request was sent to the applicant on 2 April 2026, followed by an unanswered phone call and email correspondence on 21 April 2026. At the time of writing this report, no response or additional information has been received from the applicant. Accordingly, the outstanding matters identified in the request remain unresolved. Without such an assessment, the consent authority is unable to be satisfied as to the appropriateness of the development's characterisation or its consistency with applicable planning principles.

Structural Adequacy

Given the extent of demolition proposed to the existing floors, roof and internal walls, insufficient information has been provided to demonstrate that the existing external walls can be retained as part of the proposed works. In the absence of detailed structural justification, the consent authority is unable to be satisfied that the remaining building fabric can be adequately supported and stabilised during demolition and construction.

Accordingly, a Structural Engineering Report is required to be submitted to demonstrate the feasibility of retaining the existing external walls having regard to the scope of demolition proposed. This request was sent to the applicant on 2 April 2026, follwed by an unanswered phone call and email correspondence on 21 April 2026. At the time of writing this report, no response or additional information has been received from the applicant. Accordingly, the outstanding matters identified in the request remain unresolved. Without this information, the structural integrity and constructability of the proposal cannot be adequately assessed and also raises potential concerns in relation to setback compliance if the development is a complete rebuild.

Insufficient Information

The submitted Plan of Management (PoM) does not provide sufficient or accurate information to enable a proper assessment of the proposed development. In particular, the PoM contains internal inconsistencies and omissions that undermine its reliability as an operational management document.

The PoM includes a reference to October 2022, which appears to be erroneous and raises uncertainty as to the version and currency of the document relied upon. In addition, the maximum occupancy of each proposed room has not been clearly identified and must be updated to ensure that the intensity of use can be appropriately assessed and managed.

Further, the Accommodation Standards section of the PoM does not include requirements for the manager's sleeping room. This information is required to ensure consistency with the PoM dated 17 September 2024, as referenced in the Land and Environment Court approval, and to demonstrate that on-site management arrangements are adequately addressed.

The Noise Minimisation section of the PoM also requires amendment. The section must reference the most recent acoustic report supporting the application, and clearly stipulate that the use of the outdoor terrace is limited to a maximum of 28 people at any one time.

A request to update the PoM was sent to the applicant on 2 April 2026, followed by an unanswered phone call and email correspondence on 21 April 2026. At the time of writing this report, no response or additional information has been received from the applicant. In this regard, insufficient information has been submitted to enable a complete and robust asssessment.

Acoustic Privacy

Acoustic privacy is to be considered to ensure a high level of amenity for guests and nearby residential properties. The proposed development has been designed to minimise acoustic impacts.

The proposal represents an intensification of the existing land use, and as such, an assessment of the potential acoustic impacts has been undertaken in the submitted Acoustic Report prepared by Pulse White Noise Acoustics and dated 16 December 2025. The Acoustic Report concludes:

An acoustic review of the proposed fitout of the project has been undertaken and compliance with project relevant acoustic requirements will be achieved, including those included within the existing projects approvals.

Council's Environmental Health Officer has reviewed the proposed development and Acoustic Report and raises no concern (refer **Appendix 1**).

The proposed increase in capacity from 79 guests to 90 guests is considered to be reasonable and any potential noise and amenity impacts could be appropriately managed for the following reasons:

- The intensified operation, in terms of the resultant total number of guests, can be reasonably supported by the proposed building and on-site facilities. In addition, the noise control measures in the approved Plan of Management and Acoustic Report under DA/525/2022 would continue to be applied to minimise the noise disturbance. These measures include:

  - The communal outdoor area is permitted to operate between 7am and 10pm (Monday to Saturday) and 8am and 10pm (Sunday and Public Holidays). Access shall be prohibited at all other times.
  - An on-site manager hostel will be available at all times, including during night hours when the reception desk is closed.
  - No amplified music is permitted in communal areas.
  - Signs shall be installed outlining the above requirements.
  - A complaint registration and response system has been specified in the Plan of Management.

  It is considered that the proposed management measures would minimise the likelihood of anti-social behaviour and acoustic impacts to neighbouring properties. Were the application to be approved, suitable conditions would be included to ensure that these measures will be implemented during operation of the facility.

- Consistent with DA/525/2022, were the application to be approved, a condition would be included in the Notice of Determination to require an Acoustic Report to be submitted to Council three (3) months after the issuing of the occupation certificate which demonstrates that noise and vibration emissions from the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, Environmental Protection Authority Noise Control Manual & Industrial Noise Policy, and relevant conditions of the consent (including the approved Acoustic Report).

- The submissions have raised concerns regarding increased noise emission from the rear communal outdoor area and increased capacity. It is noted that the subject application does not involve changes to the communal outdoor area or its operational arrangement. This area will be continue to be closed between 10pm and 7am/8am daily and the maximum number of capacity using the outdoor area at any time is restricted to a maximum of 28 persons. Additionally, acoustic barriers will be provided along the eastern and northern elevations of the communal outdoor area.

- All proposed new mechanical plant and equipment shall be acoustically treated to ensure the noise levels at surrounding receivers comply with the noise emission criteria detailed in the submitted Acoustic Report.

- The subject site and the adjoining residential buildings are located within the E1 Local Centre zone, which envisages a mix of commercial and residential developments. The proposed development is consistent with the objectives of the E1 zone. An acceptable level of amenity will be maintained for the nearby residences, subject to conditions.

The site is located in close proximity to tourist attractions, including Coogee Beach. From a strategic planning perspective, backpackers' accommodation is a desirable land use in the locality and will contribute to the economic development of the local centre.

The submitted Plan of Management has stipulated suitable measures to ensure the suitable operation of the facility. Further, were the application to be approved, conditions would be imposed in the Notice of Determination to include further details in the PoM. It is considered that the proposal would be unlikely to cause significant acoustic or amenity impacts, subject to compliance with the conditions of consent and the Plan of Management.

10. Conclusion

That the application to amending DA to DA/525/2022 for alterations to an existing backpacker's accommodation, including internal layout changes and reconfiguration works resulting a reduction to the number of accommodation rooms to 15 (90 occupants), ground level communal areas and changes to external openings and façade presentation be refused for the reasons listed in the recommendation section.

D29/26

Appendix 1: Referrals

1. External referral comments:

1.1. AusGrid

TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au

24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 13 13 65
ausgrid.com.au

This letter is Ausgrid's response under section 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Ausgrid consents to the development subject to the following conditions: -.

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Ausgrid Overhead Powerlines are in the vicinity of the development.

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

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

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

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

New Driveways - Proximity to Existing Poles

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

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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

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1.2. Sydney Water

2.



Sydney WATER
Water IS OUR LIFE

9 February 2026 **Our reference:** N/A

Ivy Zhang
Randwick City Council
ivy.zhang@randwick.nsw.gov.au

RE: Development Application DA/20/2026 at 171 Arden Street, Coogee (A-114626/CNR-91700)

Thank you for notifying Sydney Water of DA/20/2026 at 171 Arden Street, Coogee, which proposes alterations and additions to an existing backpacker's accommodation, resulting in a reduction in the overall room numbers from 18 to 15, increase in the total capacity from 79 guests to 90 guests, and a decrease in total GFA from 520m² to 514m². Sydney Water has reviewed the application based on the information supplied and provides the following Sydney Water requirements to assist in understanding the servicing needs of the proposed development.

Sydney Water position:	**Condition of Consent applies**
Condition of Consent which applies:	**Section 73 and Building Plan Approval required** See **Attachment 1** for recommended wording for Sydney Water conditions to be included in the consent letter.
Additional comments:	We recommend the proponent contact Sydney Water as early as possible to prevent development delays where significant adjustments or design variations are required.
Other information:	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 *Sydney Water Development Application Information Sheet (for proponent)* 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.

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



3.

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.

Additional requirements for commercial and industrial developments including the proposed development can be found in **Attachment 2**. 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

Enclosed:

- Sydney Water Development Application Information Sheet (for proponent)



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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. The compliance certificate also identifies any applicable Infrastructure Contribution charges. 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.

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Attachment 2 – Sydney Water Requirements for Commercial and Industrial Developments (for proponent's information)

Trade Wastewater Requirements

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must obtain Sydney Water approval for this permit before any business activities can commence. It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

The permit application should be emailed to Sydney Water's Business Customer Services at businesscustomers@sydneywater.com.au.

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

Backflow Prevention Requirements

Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.

Before you install a backflow prevention device:

1. Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.
2. Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300 889 099.

For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website:
https://www.sydneywater.com.au/plumbing-building-developing/plumbing/backflow-prevention.html

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Water Efficiency Recommendations

Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards (WELS) Scheme, http://www.waterrating.gov.au/
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to https://www.sydneywater.com.au/your-business/managing-your-water-use/water-efficiency-tips.html
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

Contingency Plan Recommendations

Under Sydney Water's customer contract Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.

Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.

Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

Have you thought about a contingency plan for your business? Your Business Customer Representative will help you to develop a plan that is tailored to your business and minimises productivity losses in the event of a water service disruption.

For further information please visit the Sydney Water website at: https://www.sydneywater.com.au/your-business/managing-trade-wastewater/commercial-trade-wastewater.html or contact Business Customer Services on 1300 985 227 or businesscustomers@sydneywater.com.au.

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4.

5. Internal referral comments:

5.1. Heritage planner

Comments
The development in terms of bulk and scale does not propose a significant impact on the heritage items in the vicinity.
The proposed materials/colours (as illustrated in previous DA/525/2022) are supported.

Recommendation
Supported from a heritage perspective, no additional condition is required

5.2. Development Engineer

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

Sydney Water Comments
In addition to standard building plan approval, Sydney Water have advised in letter dated 9th February 2026 (see Trim Ref D06019218) that a Section 73 compliance certificate will also be required prior to the issuing of an occupation certificate. A suitable condition has been included in this report.

Parking Comments
Table 1 - Part B7 of Council's DCP specifies parking to be provided for backpackers at the rate of 1 space per 10 beds or 1 space per 5 bedrooms (whichever is the greater) plus 1 space per 2 staff. Motorcycle parking is also to be provided at 5% of the vehicle parking rate

Existing Situation
The current approval under DA/525/2022 allows a total of 18 rooms and 77 beds. Under the DCP this would generate a demand of 7.9 spaces plus 1 space for staff being a total of 8.9 or 9 spaces when rounded.

No on-street parking is currently provided on the site as the existing garage (with access from the adjacent Right of Way) is being used for storage. Any generated parking demand is therefore being burdened by the surrounding street network

It is acknowledged that due to the site's proximity to Coogee Beach, amenities, and good public transport, the existing parking demand is likely to be less than the DCP predicts. The site is well situated to reduce dependence on a motor vehicle and the nature of the clientele for backpackers accommodation would likely result in a low parking demand in this instance.

Proposed development
The proposed development is seeking approval for alterations and additions to the existing backpackers accommodation resulting in a decrease from 18 to 15 rooms but an increase in the number of guests from 79 to 90. It has not been specified if additional staff intend to be employed but it is logical to expect that will be the case.

Under the DCP the 1 space per 5 rooms rate would generate a parking demand of 3 spaces (for 15 rooms) while the 1 space per 10 bed rate would generate a demand of 9 spaces (for 90 beds). A minimum of 1 additional space for staff (based on the 1 space per 2 staff rate) has also been estimated. This would result in a total parking demand of about 10 spaces when adopting the higher DCP rate and representing an additional parking demand of 1 space.

Similarly to the previous approval it is acknowledged that due to the site's proximity to Coogee Beach, amenities, and good public transport, the parking demand is likely to be less than the DCP predicts. For example, regular bus service 374 to the city is meters from the front door. The site is well situated to reduce dependence on a motor vehicle and the nature of the clientele for backpackers accommodation would likely result in a low parking demand in this instance.

As additional parking is not possible measures to mitigate this parking demand shall be provided if the application is to be supported. This may include but not be limited to measures to encourage public transport and bicycle use.

It should be noted that condition 19 in DA/427/2011 was designed to minimise parking demand and states;

> *All prospective guests shall be advised that there is no on-site car parking available at the premises, with only limited and restricted on-street parking in the area, and accordingly shall be encouraged to use public transport. Such advice shall also be displayed prominently on any web site and in any advertising brochures issued by the business.*

This condition was also repeated for DA/525/2022 and Development Engineering would recommend repeating this condition for the subject proposal as well, and so has been included in this report.

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

Waste Management Comments
Waste generation for the development has been assessed as per the rates provided in Council's 'Waste Management Guidelines for Proposed Developments' given for backpacker accommodation as 6 litres/occupant/day for normal garbage and 3 litres/occupant/day for recycling for Backpacker developments.

The proposed changes in beds will result in a total of 90 beds and will therefore generate the following amount of waste per week;

Normal garbage (weekly generation) = 90 x 6 x 7 = 3780L
Recyclables (weekly generation) = 90 x 3 x 7 = 1890L

Assuming a standard 240L bin this would generate a total demand for 16 garbage (red lid) bins and 9 x recycling (yellow lid) per week. Two 240L bin may also be required for Council's new Food Organic Garden Organic (FOGO) depending on existing provision.

The area required to accommodate an additional 8-9 x 240L bins above existing demand is significant on such a tight site and a condition requiring an updated waste management plan has been conditioned as part of this report.

Undergrounding of power lines to site
At the ordinary Council meeting on the 27th May 2014 it was resolved that;

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

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

5.3. Environmental Health Officer

The proposed works are predominantly internal and will maintain the character and streetscape contribution of the approved development (DA/525/2022) and have no additional or new impacts on the amenity of adjoining properties. The design of the building is intended to maintain consistency with the character, bulk and scale of the neighbouring buildings. The backpacker's accommodation will continue to operate in accordance with existing consents and Plan of Management for the site. There will be no change to the use or management of the existing facility, other than an updated Plan of Management to address the increase in capacity. The completed development will provide accommodation for 90 guests within 15 rooms.

Acoustics

PWNA report dated 16 December 2025 Confirmed design and operational requirements for outdoor area.

Appropriaiate conditions have been included in this report.

Hazardous Materials

Standard hazardous materials condition will be provided by Building Compliance section.

Identified inclusions for appropriate conditions have been included in this report and should be included as required when reviewing Building Compliance referral.

Plan Of Management

The Plan of management referred to in the proposal has been required to be reviewed by a suitably qualified acoustic consultant to address any required amendments.

Appropriate conditions have been included in this report.

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

PLANNING
INGENUITY

ANNEXURE B

Request for Variation to Floor Space Ratio Development Standard Clause 4.4 to Randwick Local Environmental Plan 2012



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Amended Clause 4.6 Variation Request – Floor Space Ratio (Clause 4.4)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP 2012) to accompany a development application seeking consent for alterations and additions to the existing and approved backpacker's accommodation at No. 171 Arden Street, Coogee ('the site'). The application seeks consent for partial demolition, alterations and additions with internal layout reconfiguration, inclusion of servicing for water metering and fire hydrant, accessibility and fire safety and minor changes to the façade treatments and reconstruction of the garage and storage spaces. The resultant development will contain 15 rooms (including one (1) manager's room) and will have a maximum guest capacity of 90.

2. BACKGROUND

DA/525/2022 was granted consent by the NSW Land and Environment Court (2024/164460) under Section 8.7 of the *Environmental Planning and Assessment Act 1979*, and the application was approved on 1 October 2024. This approval included a clause 4.6 variation request for the floor space ratio (FSR) development standard in RLEP 2012. The approved FSR was 1.96:1 which represents a Gross floor area (GFA) of 520m^2.

3. PROPOSED VARIATION

Clause 4.4 of the Randwick LEP 2012 (RLEP 2012) prescribes the maximum floor space ratio for the site and refers to the Floor Space Ratio (FSR) Map. The relevant map indicates that the maximum FSR permitted at the subject site is 1.5:1 (allowing a maximum GFA of 398.25m^2), as shown in **Figure 1** below.



Figure 1 Extract from the Floor Space Ratio Map with the site outlined dashed yellow (Source: NSW Planning Portal Spatial viewer)

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Architectural plans prepared by *Mostaghim Architects* (Project number 21010) indicate that the proposed development has a total 514m^2 of gross floor area (GFA), providing a floor space ratio (FSR) of 1.94:1 and is therefore non-compliant with the prescribed maximum FSR. The extent of non-compliance for the site area is 115.75m^2. This is equivalent to a 29.06% variation.

4. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 to RLEP 2012 are as follows:

> *"(1) The objectives of this clause are as follows—*
>
> *(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
>
> *(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
>
> *(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
>
> *(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
>
> *(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
>
> *(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*
>
> ***Note—***
>
> *The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*
>
> *(4) The consent authority must keep a record of its assessment carried out under subclause (3).*
>
> *(5) (Repealed)*
>
> *(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
>
> *(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
>
> *(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
>
> *(7) (Repealed)*
>
> *(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

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(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)."

It is noted that Clause 4.4 is not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8).

This request will address the requirements of Subclauses 4.6(3) and (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum floor space ratio of 1.94:1 which equates to a numerical exceedence of 115.75m^2 and a variation of 29.06%.

5. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, *inter alia*:

> *"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

> *"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are five different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

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

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4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

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

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

Compliance with Objectives for FSR

Compliance with the floor space ratio (FSR) development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out below.

The objectives to Clause 4.4 of RLEP 2012 are as follows:

> *"(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
>
> *(b) to ensure that buildings are well articulated and respond to environmental and energy needs,*
>
> *(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
>
> *(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 following evidence is presented to demonstrate the proposal achieves the abovelisted objectives despite the numeric non-compliance.

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

The proposal is considered to provide a compatible built form with regards to the desired future character particularly as the resultant height and built form is the same as that approved with DA/525/2002.

The built form and scale is also consistent with the existing height and built form on neighbouring properties to the north, west and south of the site.

The subject site is zoned E1 Local Centre which anticipates three storey street wall buildings which are sympathetic to nearby heritage buildings and provide a variety of land uses that support the vitality and viability of the centre. The proposal is designed to ensure that the floor space is contained within the building envelope approved with DA/525/2002, with a compliant height.

In preparing the application the project architect has had careful regard to the existing and approved built form and massing which has provided clear direction as to the sites capacity to accommodate the approved GFA.

Notwithstanding the permissible FSR (1.5:1) the existing building is clearly dwarfed by the existing built form as illustrated at **Figure 3** below.



Figure 3 Existing scale and form of development surrounding site.

The GFA of the proposal is 6m^2 less than that approved for DA/525/2022.

For these reasons the size and scale of the proposal is considered to be compatible with the desired future character of the locality including the scale and size of existing heritage listed buildings on the opposite side of Arden Street which are likely to at least remain at a height and scale which exceeds that of the proposal.

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

The articulation of the building remains unchanged comparted to that approved with DA/525/2022.

Backpacker accommodation is not a BASIX development and is not subject to minimum environmental and energy targets set by State Environmental Planning Policy (Sustainable Buildings) 2022. Notwithstanding it is acknowledged that environmental performance and responsible management of energy consumption is an object of the EP&A Act. The letter by Core Engineering dated 16 December 2025 submitted with the application indicates there are no matters of non-compliance with the Building Code of Australia which includes minimum performance standards for insulation, materials selection, natural light and ventilation.

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For these reasons the proposal is consistent with Objective (b) despite the numeric non-compliance.

Objective (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 site is not a Heritage Item or a Contributory Building, and the site is not located within a Heritage Conservation Area. However, located on the opposite side of Arden Street is No. 182 Arden Street, an Art deco residential flat building known as 'Juvina' and identified as an item of local heritage significance (Item No. I45). Adjacent to Juvina at No. 184 Arden Street is 'Beach Court', a Neo-classical residential flat building which is also an item of local heritage significance (Item No. I46).

The proposed development is located on the opposite side of Arden Street which is approximately 20m from the heritage items and will not impact on the scale or character of the heritage items. The resultant built form notwithstanding the breach in FSR is compatible with the scale and character of the nearby heritage items. The landscaping within the front of the building will enhance the streetscape character and will improve the site entry for visitors to the accommodation. The building design incorporates architectural elements that are sympathetic to the heritage items nearby and will ensure the built form is entirely compatible with the surrounding context.

Therefore objective (c) is achieved and the proposal is compatible the scale and character of the closest heritage items.

Objective (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.

It is considered that the proposal has no new or additional impacts in comparison to the approved DA/525/2022. Despite non-compliance with FSR, the proposal will not unreasonably compromise the use and enjoyment of neighbouring properties in terms of privacy, daylight access or views.

In terms of privacy, the proposed development has been designed to minimise privacy impacts on adjoining properties through careful placement and orientation of windows as approved with DA525/2022 with additional improvements to the acoustic attenuation of window design and installation. It is considered that the proposed development will not result in any material loss of privacy when compared to a building with a compliant FSR.

With regards to solar access, the proposed building does not change the 3D building envelope approved with DA525/2002 which was found to have acceptable impacts.

Potential view loss has been analysed with DA/525/2022 and is repeated below. The proposal will enhance the existing streetscape through the building renovation and expansion so that it will sit comfortably on Arden Street and is entirely compatible with the scale of the surrounding developments.

The proposed building envelope is compatible with neighbouring and nearby developments with similar characteristics as the subject site. The proposed gross floor area is 6m^2 less than that approved with DA/525/2002

Accordingly, the proposal is consistent with objective (d), despite the FSR breach.

Compliance with the objectives of Zone E1

The objectives of Zone E1, and a response as to how the proposal meets the objective is provided as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the area.*

The proposal will upgrade the existing and approved backpacker's accommodation which is an existing business that seeks to serve the needs of people who visit the area and will continue to indirectly support local businesses and

services through patronage by future guests. The proposal seeks to ensure that the use continues and that the needs of budget travellers are met.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

The proposal seeks to maintain the employment opportunities at the site for staff that operate and maintain the backpacker's accommodation as well as businesses in the locality. The existing business maintains employment opportunities within an accessible location.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

The use is a type of tourist and visitor accommodation that contributes to a vibrant and active local centre, particularly as visitors to the backpacker's accommodation would also support retail, food and drink, transport and service and recreational businesses nearby.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

The ground floor accommodates the entry / exit foyer, communal indoor facilities, an accessible guest room and reception space.

- *To maximise public transport patronage and encourage walking and cycling.*

The occupants of backpacker's accommodation generally do not use private vehicles and therefore benefit from the location near public transport. The owners of the accommodation are aware of the site's parking constraints and encourage that visitors reach Coogee Beach House by public transport. Information provided at the point of booking specifies there is no parking available to visitors and therefore guests make an informed decision based on this information.

- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*

The proposed upgrade to the existing and approved backpacker's accommodation will deliver a high standard of urban design through the proposed works.

- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*

The proposed development continues the existing and approved use at the site. The proposal, in particular the additional FSR does not undermine the relationship between the residential and non-residential uses, the current use providing tourist accommodation that also seeks to support the E1 Local Centre zone.

The Plan of Management will ensure that the use of the premises is appropriately managed and the amenity of residents and businesses in the neighbourhood is protected. The Plan of Management is consistent with that approved with DA525/2022.

- *To facilitate a safe public domain.*

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The proposal has been designed to provide rooms and a foyer and reception desk that have clear lines of sight that overlook the street and adjoining right of way, achieving passive surveillance of the public domain and in turn contributing to safety.

- *To support a diverse, safe and inclusive day and night-time economy.*

The backpacker's accommodation has existed at the site for approximately 15 years and its continued use will contribute to the diverse, safe and inclusive day and night-time economy in the area. The accommodation is ideally located within close proximity to Coogee's café, restaurants and pubs which provides occupants of the hostel with entertainment opportunities in the day and night. The hostel is within walking distance of Coogee, accessible along a well-lit, main road and therefore provides occupants with safe access to the local economy.

For all of the above reasons the proposal is consistent with the objectives for development in Zone E1 Local Centre.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the following points demonstrate specific environmental planning grounds to support the numeric variation to FSR.

1. The proposed non-compliance is a smaller variation and lesser FSR than that found to be acceptable and approved with DA/525/2022.
2. The changes proposed to the existing and approved hostel are sought to facilitate significant improvements to the quality, safety and layout of the rooms and amenities and does not contribute to any material impact, as a consequence of the Variation, on the amenity or the environmental values of surrounding properties, the amenity of future building occupants, the amenity of neighbouring properties and the character of the locality.
3. Acoustic walls and a roof to the outdoor terrace were approved with DA/525/2002 to achieve suitable noise attenuation in combination with limitations as to how the space is utilised as set out in the approved Plan of Management. This application also proposes changes to the design and construction detail of the window and door openings to improve noise attenuation and fire safety. This application also includes specific design detail for fire safety and essential building services which are improvements upon the previous consent DA/525/2022. None of these further improvements add further to the approved GFA (and in fact decrease GFA by 6m^2).
4. The non-compliance represents a maximum breach of 115.75m^2 which may appear to be numerically significant but in the context of its surroundings it will still remain one of the smaller buildings in the immediate neighbourhood. The breach is contained within a building footprint approved with DA/525/2002 and has already been found consistent with the built form of neighbouring development as part of the assessment and determination of DA/525/2002.
5. The proposed FSR will not result in a building that appears noticeably larger than that which is anticipated by the controls or by what exists in the immediate locality and is likely to persist into the future. Importantly while the FSR exceeds the maximum permissible, the building height remains compliant and mostly below the 12m height maximum in accordance with the height of building development standard. The proposed FSR is not concentrated in a specific area of the site and is instead, dispersed across the site allowing the proposed development to be in keeping with the character of the area and the objectives for the control.
6. The subject development results in an acceptable bulk, scale and form that reflects the existing character of development in the local centre zone. The additional FSR is contained within the maximum building height and will not appear as visually obtrusive from the public domain. The additional FSR will be contained within a three-storey built form, which is consistent with, and recessive in comparison to, neighbouring buildings. The proposal

is compatible with the established setbacks along Arden Street and contributes to the street wall buildings by adding an additional floor level filling a gap in the street scape. Refer to Figure 4 below which shows the streetscape fit of the proposal.



Figure 4 Streetscape model for proposed development

7. The proposed FSR variation does not bring with it a form of development on the site that is noticeably larger or incompatible with development form that is anticipated by the controls, or inconsistent with the character for the locality generally. As identified, the additional FSR is contained within a well-designed contemporary built form and has been successfully integrated throughout the building envelope. The primary façade of the development provides an appropriate bulk and scale which is compatible with development which can be reasonably anticipated by the E1 zoning and applicable planning controls.
8. The proposed building reflects a similar setback to neighbouring development characteristic of the Local Centre zoning, noting that a small landscaped area within the front setback as approved with DA/525/2022 has been retained and adjusted to accommodate essential services metering and fire hydrant. The landscaping enhances the accessible, styled entry and reception area improving the existing interface with the streetscape.
9. A significant portion of the gross floor area (28sqm) is attributable to the approved enclosed outdoor terrace with acoustic walls and roof to create an appropriate communal external space on Level 2. This is a significant improvement upon the current outdoor open space at the site. It will ensure that the amenity of future guests and neighbouring properties is improved and protected through a superior design, acoustic treatment and a plan of management for its use. The use of the outdoor area will be limited to between 10pm and 7am Monday to Saturday and 10pm and 8am on Sunday and public holidays and is limited to the number of occupants who can use the space at any one time (28 persons). These management measures will minimise impacts from use of the space and were supported in the approval of DA/525/2002. It would be unreasonable to detract from the

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quality and amenity of the approved building to delete the outdoor terrace space for the sake of reducing the numeric exceedance to FSR.

10. It is considered that there is an absence of any significant material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically, the extent of non-compliance with the FSR development standard:
    (a) creates no significant overshadowing when compared to the approved DA/525/2022 or compared to a compliant FSR, particularly as it still remains one of the smallest buildings within the locality. That is, the height of the proposal is compliant with the height standard and reduction in the building envelope to reduce FSR would not necessarily provide any benefit for solar impacts.
    (b) The FSR breach does not result in any significant additional privacy impacts. The communal living and dining areas for the hostel are retained at ground level. The approved outdoor terrace sand Level 2 remains as approved with DA/525/2002. Acoustic impacts will be improved by the proposal through acoustic attenuation of the window openings. The ability to improve acoustic outcomes is a direct result of the provision of additional FSR on the site; and
    (c) The additional FSR does not create any significant additional view loss in comparison to the approved DA/525/2022. The view impact analysis of DA/525/2002 is included below as reproduced from the Clause 4.6 variation request approved with DA/525/2002.

"For the building adjoining to the north, only small windows to the third floor flat would be impacted by the new floor level, however, the views are limited by the existing development further south along Dolphin Street and the existing pine trees which are characteristic of the foreshore environment (refer to images below). The view lost could be better described as an outlook as opposed to a view and it exists as a result of buildings to the south currently being built below the maximum height limit. It is likely that these properties will be redeveloped at some point in the future. Furthermore, the outlook that is lost is caused by the proposal which is well below the height limit, as shown by the red line on the images below.



Outlook from Unit 6 169 Arden Street (property to the north)

The images below show view impact from the upper level unit of property to the north-west, opposite the site. As can be seen, the proposal does not reduce any views to the water, or in fact even pine trees within the reserve at the beachfront.



Views across the site from north-west

In addition, the below image includes a model view depicting view impact from 5/182 Arden Street. Again, the impact is caused by a height compliant part of the proposed building and results in a negligible change, removing a very small element of water view (which is not a land/water interface view). The horizon is maintained in totality from this vantage point and the proposal will in fact maintain a view corridor to a greater extent than adjoining properties as a product of its height. Accordingly, the proposal is considered to appropriately adopt view sharing principles when considered from this property.



Views from 5/182 Arden Street, Coogee"

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11. The massing of the building will be compatible with the character of the existing and emerging surrounding development. The proposed building will comfortably relate to the character of the locality and has incorporated superior planning outcomes to ensure the scale of development with regards to FSR and height is considered to be appropriate in the locality. The subject site and proposed 3D building envelope is currently much smaller than the neighbouring sites and buildings and there is opportunity to develop the site and maintain a built form that is compatible and in keeping with its surrounds. As noted, even with the additional floor level approved with DA/525/2002 and non-compliant FSR the building will still remain smaller than most of the neighbouring buildings.
12. The social benefits of providing additional and diverse budget accommodation within a highly sought after location should be given substantial weight in the consideration of the variation request. The proposed development achieves an environmental planning outcome by providing additional guest rooms without having an adverse impact on the amenity of adjoining properties and achieving compatibility with the character and built form of the locality. Rejection of this request and this application will result in the implementation of DA/525/2022 which has an approved GFA exceeding the proposal.

The abovelisted reasons are specific to this case and specific to the environmental outcomes of the proposed FSR.

The above environmental planning grounds are not general propositions. They are specific circumstances to the proposed development. The FSR is a consequence of specific improvements to the existing and approved backpacker's accommodation.

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

> *"86 The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
>
> *87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."*

7. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(A)(I))

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

a. The proposal promotes the orderly and economic use and development of land through the upgrade of an existing hostel which benefits the vitality and viability of Coogee beach local centre (1.3(c));

b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development and in comparison to the development approved by DA/525/2002. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 5 above (and furthermore in terms of meeting the objectives of the development standard this is addressed in 8a below). Clause 4.6(3)(b) is addressed in Section 6 above.

8. CONCLUSION

Having regard to all of the above, it is our opinion that numeric compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable.

The existing building at the site is noticeably smaller than the neighbouring buildings. The additional gross floor area approved with DA525/2022 was supported. The proposed GFA will still remain below the height and scale of immediately adjoining buildings. The design seeks to ensure that architectural qualities of nearby heritage buildings are matched with appropriate elements of the building façade and high quality materials and landscaping are proposed. Overall, the proposal will deliver a superior built form compared to the current and approved building at the site.

On this basis, the requirements of Clause 4.6(3) are satisfied and the variation is worthy of support.

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Appendix 3: DCP Compliance Table

1.1. Section B6 – Recycling and Waste management

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

1.2. Section B7 – Transport, Traffic, Parking and Access

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

1.3. Section B9 – Management Plan

The submitted Plan of Management (PoM) does not provide sufficient or accurate information to enable a proper assessment of the proposed development. Refer to the Key Issues section for details.

1.4. Section B10 – Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	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.	The proposed development is consistent with the approved design and visual presentation. There are no changes proposed to the building envelope, height or bulk and scale. The proposal continues to be compatible with the character of surrounding development and the streetscape. The proposed development is unlikely to be readily perceived from the foreshore or coastline. The proposal will not impact upon the scenic qualities of the foreshore as the development has been generally designed with materials that are sympathetic to the coastal locality.	Yes

3.3 Section D6 – Neighbourhood Centres

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
2	**Site Planning**		
2.3	**Building Heights**		
	ii) In neighbourhood centres with a 12m maximum height limit, development must not exceed 3 storeys in height (with the exception of habitable roof space/partial floor which must be setback so as not to be visible from the street or incorporated into the roof design to have the appearance of a roof rather than an additional storey). iii) The proposal must provide a minimum 2.7m floor to ceiling heights at the upper floors.	The proposed development is three (3) storeys in height and the each floor level has a minimum floor to ceiling height of 2.7m.	Yes
2.4	**Setbacks**		
2.4.1	**Front Setback**		
	i) For development fronting a primary road, above 9.5m in building height, a 2m front setback applies. ii) Provide increased setbacks over and above the aforementioned minimum requirements, or demonstrate the suitability of an alternative setback having regard to the following matters: existing predominant street setback and character of the street.	The proposal retains the existing front setback at the ground and first floor levels and the approved second floor level.	Yes
2.4.2	**Rear Setback**		
	Where the site has rear lane access, car parking structures (hardstand carspace, carport or garage) and ancillary development must have a 1m minimum setback from the rear boundary.	Not applicable – the subject site does not have rear lane access. The rear car parking garage is accessed via a right of way and has a nil rear setback.	N/A
2.4.3	**Side Setback**		
	v) Where the site's side boundary adjoins land in a business zone, provide a zero metre side setback.	The proposal maintains nil side setbacks.	Yes
3	**Building Design**		
3.1	**Facades**		
	iii) Facades should display proportions and detailing which respect the prevailing building facades across the centre (i.e. designing fine grain shop fronts, where the existing subdivision is fine grain). vi) All street frontage windows at ground level are to have clear glazing. Large glazed shopfronts should be avoided, with window configurations broken into discrete sections to ensure visual interest. vii) All facade elements must be	The proposal retains the approved façade design, which is suitable and responds to the context of the site. The proposal continues to incorporates significant heritage elements from heritage items within the vicinity. Council's Heritage Officer has reviewed the application and did not object to the proposal.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	contained within the site boundaries. viii) Building services, such as drainage pipes shall be coordinated and integrated with overall facade and balcony design.	Additionally, the proposed landscaped front setback continues to improve the streetscape interface of the development.	
3.2	**Roof Forms**		
	i) In centres where parapet forms are prevalent, development should include parapets that reflect the rhythm, scale and detailing of existing parapets. ii) Provide flat roofs where these prevail across the centre, unless the site conditions justify an alternative roof form (eg. Corner sites). iii) Design roof forms to generate a visually interesting skyline, while minimising apparent bulk and potential for overshadowing. The style and pitch of new roofs should relate sympathetically to neighbouring buildings. iv) Relate roof forms to the size and scale of the building, the building elevation and the three dimensional building form. v) Structures such as ventilation shafts, lift overruns and service plants, should be wholly contained within roof structures and not project above the roof line.	The proposed development retains the approved flat roof form, which is characteristic of development within the immediate vicinity of the site. The roof form relates to the size and scale of the building, the building elevation and the three dimensional building form. The rooftop plant will not be readily perceived when viewed from Arden St as it is located on the roof of the rear terrace, which is set below the main roof line.	Yes
3.4	**Colours, Materials and Finishes**		
	i) Utilise high quality and durable materials and finishes which require minimal maintenance. ii) Combine different materials and finishes to assist building articulation and modulation. The use of face bricks and/or natural stone cladding may assist the integration of new development into the existing streetscape. iii) The following materials are considered incompatible: • Large wall tiles; • Rough textured render and/or bagged finish; • Curtain walls; and • Highly reflective or mirror glass. iv) Avoid large expanses of any single material to facades. v) Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.	The proposed colours, materials, and finishes are generally suitable. Were the application to be approved, a condition would be included to confirm that the colour Surfmist is not permitted as it is highly reflective.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
3.5	**Lighting**		
	i) The external lighting of buildings must integrate external light features with the architecture of the building. ii) Under awning lighting should be provided in accordance with the relevant Australian Standard. iii) Where residential development is located above or adjoins the development, provide location and design details demonstrating that light is directed away from residences. iv) Avoid floodlights or excessive lighting of buildings.	Capable of complying	Yes, subject to condition
4	**Public Domain**		
4.1	**Active Frontages**		
	i) Maximise street level activity (e.g. by wrapping shopfronts around corners) and minimise opaque or blank walls at ground level. ii) Minimise vehicular entrances not associated with active uses or building entries. iii) Security grilles or shutters may be fitted only within the shop itself behind glazing, and must offer a minimum of 70% transparency.	Complies	Yes
4.2	**Pedestrian Access**		
	i) Development should aim to increase the area of public spaces and pedestrian links that are available in the business centres. ii) In designing such areas, consideration should be given to solar access and protection from wind and rain. iii) Pedestrian and vehicle accessways are to be separated and clearly distinguishable. iv) Pedestrian areas should minimise any changes in levels and allow wheelchair access to the shops from the car parking area and public footpaths. v) Consider artworks and design which integrates private development with the public domain. Eg. Window treatments, paving, sculptures and decorative elements.	Complies	Yes
4.3	**Vehicular Access**		
	i) Where new development has access available off rear laneways or side streets,	No change is proposed to the existing vehicular	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	vehicular access must be provided from the laneway or side streets. ii) Where no alternative street frontage is available: - demonstrate alternative sustainable measures for meeting parking and delivery requirements. - The entry to the building should be designed to give priority to pedestrians by maintaining a constant grade for the footpath crossing for pedestrians. - Before the exit from the site, speed bumps and/or warning signs to give way to pedestrians should be provided. The vehicle crossing area of the footpath should be identified by pavement blending with the footpath treatment as required by Council's Engineering Services. iii) Design driveways to minimise visual impact on the street and maximise pedestrian safety. Setback any rear lane garage doors 1 metre from the laneway alignment. iv) Avoid locating accessways to driveways adjacent to the doors or windows of habitable rooms	access, which is provided via the existing driveway to the south of the side (by way of a right of way).	
4.4	**Loading Areas**		
	i) Provide for loading facilities on site wherever feasible or demonstrate that suitable alternative arrangements to minimise impact on other premises and people within the centre. ii) Service/delivery areas are to be located to minimise conflict between pedestrians/cyclists and vehicles and to minimise impact on residential amenity of neighbouring properties. iii) Where new development has access available off rear laneways or side streets, loading areas shall be located off these areas.	No change is proposed to the existing loading arrangements at the site.	N/A
5	**Amenity**		
5.1	**Solar Access**		
	Commercial and mixed-use development are not to reduce sunlight to adjacent dwellings below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 8am and 4pm on 21 June.	The proposal remains the existing and approved building height and building setbacks. There are no greater impacts on adjoining properties.	Yes
5.2	**Acoustic and Visual Privacy**		
	i) Developments are to be designed to minimise noise transmission by: • Locating busy noisy areas next to	Council's Environmental Health Officer has confirmed that the	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	each other and quieter areas next to each other; • Locating bedrooms away from busy roads and other noise sources; • Using storage or circulation areas within a dwelling to buffer noise from adjacent apartments, mechanical services or corridors/lobbies. • Avoid locating wet areas, such as toilets, laundries and kitchens, adjacent to bedrooms of adjoining dwellings.	submitted Acoustic Report demonstrates compliant noise emissions. No significant adverse amenity impacts to neighbouring properties are likely to occur, subject to relevant conditions of consent. The proposal does not involve changes to the existing and approved size and location of window openings and therefore does not have greater visual privacy impacts on neighbouring properties.	

3.4 Section D10 – Backpackers Accommodation

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
2	**Building Design**		
2.1	**Sleeping Rooms**		
	i) The minimum area of a sleeping room must comply with the Public Health Regulation 2012 – the room has a floor area of 5.5sqm or more for each person sleeping in it (where the length of stay is more than 28 consecutive days), or 2 square metres or more for each person (in any other case). ii) Provide adequate space and secured storage facilities to allow occupants to store clothes and travel gear in each sleeping room, or alternatively, provide adequate facilities elsewhere in the building. iii) Provide appropriate floor construction and materials in sleeping rooms to minimise noise generation. iv) Bedding and flooring must be able to easily be cleaned and maintained. v) Each sleeping room must contain an operable window opening to outdoor areas for natural light and ventilation.	**Floor areas of guest rooms (m^2):** Room 1 – 11.10 Room 2 – 11.71 Room 3 – 20.52 Room 4 – 16.13 Room 5 – 16.14 Room 6 – 16.26 Room 7 – 8.41 Room 8 – 19.61 Room 9 – 7.39 Room 10 – 22.78 Room 11 – 16.05 Room 12 – 16.05 Room 13 – 16.04 Room 14 – 9.27 Room 15 – 7.54 Total floor area for guest rooms: 215m^2 Total guests: 90 **Floor space per guest:** 2.39m^2 – complies, subject to condition limiting length of stays to 28 consecutive days. Were the application to be approved, a condition	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
		would be included to ensure lockable storage facilities are provided in each sleeping room for guests. Each sleeping rooms is provided with an operable window opening, except for Room 9 and Room 15. Both rooms have fixed fire shutters to comply with fire safety regulations. Each room will accommodate maximum 2 guests and will be mechanically ventilated. This arrangement is consistent with the court approval under DA/525/2022 and is therefore acceptable.	
2.2	**Toilets and Showers**		
	1. Minimum 1 x wash basin, toilet, and shower per 7 guests	Required = 13 Proposed = 13 x basins, 13 x toilet, 12 x shower The proposal falls short of the DCP requirements by 1 x shower, which appears to be a drawing error as the Unisex bathroom next to fire stairs on Level 2 can accommodate a shower. Were the application to be approved, a condition would be imposed requiring a minimum of 13 x basins, WCs, and showers to be provided. 	Yes, subject to conditions
2.3	**Kitchen Facilities and Dining Areas**		
	i) Provide at least 1 kitchen and 1 communal dining area with minimum combined floor area of 1sqm per person	Combined floor area of 100.03m^2 equates to 1.11m^2 per guest The proposal seeks to	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
		increase the floor space and functionality of the kitchen/dining area. In addition to the kitchen/dining area, additional communal area is provided on the ground floor for guest use.	
	ii) Cooking facilities should be sufficient so that 15-20% of maximum number of guests may prepare meals at any one time	The kitchen has ample area to accommodate a sufficient number of appliances and space for guests to prepare meals. As shown on the submitted floor plan, approximately 18 guests could use the kitchen at any one time, equating to 20% of guests.	Yes
2.4	**Laundry & Drying Facilities**		
	i) Provide a separate communal laundry area within the building. ii) Provide one (1) washing machine and one (1) wash tub for every 30 beds. iii) Provide one (1) dryer or 20 metres of external clothes line for every 30 beds.	Required = 3 x washing machine and 3 x dryer Proposed = 2 x washing machine and 2 x dryer The proposal falls short of the DCP requirements by 1 x washing machine and 1 x dryer. Were the application to be approved, a condition would be included requiring a minimum of 3 x washing machines and dryers to be provided.	Yes, subject to conditions
2.5	**Communal Outdoor Recreation Area**		
	i) Provide a communal outdoor recreation area in the form of a courtyard, terrace, balcony, deck or the like, with total area of 30 square metres or 1.5 square metres per guest, whichever is the lesser. The outdoor recreation area must have a minimum dimension of 3 metres.	The proposal retains the approved rear communal outdoor area at Level 2, which provides 28.28m^2 of communal recreational area with minimum dimensions greater than 3m and nil setbacks to the side and rear. Acoustic walls to the boundaries adjoining residential uses are retained as approved to mitigate potential acoustic and visual privacy impacts.	Merit Assessment
	ii) Setback the outdoor recreation area from neighbouring residential properties by a minimum of 2 metres, or otherwise physically separate from those neighbouring properties to the extent that the potential for overlooking, noise and littering is minimised (e.g. through fencing and/or landscaping).		
2.6	**Noise, Privacy and Amenity**		
	i) Sources of noise, such as kitchens,	Council's Environmental	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	communal rooms, outdoor recreation areas and parking areas, must be sited and designed to minimise noise impact on adjoining properties. ii) Rooms and features that generate noise (e.g. laundry, communal room and kitchen) must be located away from, or sound proofed from sleeping rooms. iii) Windows and external openings must be located away from internal and external noise generators. iv) Mechanical plant and equipment must be located in areas away from living or sleeping rooms within the development and adjacent buildings. v) For new development, alterations and additions and proposals with an increase in guest numbers, a noise assessment report prepared by an appropriately qualified acoustics consultant must be submitted with the DA.	Health Officer has confirmed that the submitted Acoustic Report demonstrates compliant noise emissions. No significant adverse amenity impacts to neighbouring properties are likely to occur, subject to relevant conditions of consent.	
3	**Management Plan**		
	Submit a Management Plan with all DAs for backpackers' accommodation in accordance with Section B9 of RDCP 2013	The submitted Management Plan does not provide sufficient or accurate information to enable a proper assessment of the proposed development. Refer to discussion in the Key Issues section.	No

Responsible officer: Ivy Zhang, Senior Environmental Planning Officer

File Reference: DA/20/2026

Development Application Report No. D30/26

Subject: 202-204 Alison Road, Randwick (DA/1267/2025)

Executive Summary

Proposal:	Alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in 6 x residential units and 4 x car spaces, associated ancillary and landscaping works (Heritage Conservation Area).
Ward:	North Ward
Applicant:	S Truong
Owner:	Mr S Truong
Cost of works:	$2,036,091.65
Reason for referral:	The development is subject to Chapter 4 of the Housing SEPP as the building is 3 or more storeys and contains at least 4 dwellings.

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/1267/2025 for alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in 6 x residential units and 4 x car spaces, associated ancillary and landscaping works at No. 202-204 Alison Road, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1. RLPP Dev Consent Conditions - DA/1267/2025 - 202-204 Alison Road, Randwick

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Subject Site

Submissions received

North

Locality Plan

1. Executive summary

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

- The development is subject to Chapter 4 of the Housing SEPP as the building is 3 or more storeys and contains at least 4 dwellings

The proposal seeks development consent for alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in a three (3)-storey shop top housing containing 2 x ground floor shops and 6 x residential units above and 4 x car spaces, associated ancillary and landscaping works.

The key issues associated with the proposal relate to bulk and scale and non-compliant building depth, nil provision of landscaped open space or deep soil area, non-compliant building separation distances & visual privacy impacts, overshadowing impacts, and insufficient parking spaces.

The proposal is recommended for approval subject to non-standard conditions that require design amendments to further mitigate the impacts.

2. Site Description and Locality

The subject site is known as 202-204 Alison Road, Randwick and is legally described as Lot B & Lot C in DP 439249. The site is 328.5m^2 and is regular in shape. It has a 12.7m frontage to Alison Road to the south and a 26.01m frontage to an unnamed laneway, which is burdened by right of way and provides vehicle and pedestrian accesses to the subject site, No.206 Alison Road, and properties along The Avenue located to the north. The site contains a single storey shop on No.202 and a two storey shop top housing on No.204.

The site is zoned E2 Commercial Centre and is located within Randwick Junction Town Centre. It adjoins R3 Medium Density Residential zone to the north/rear and SP2 Infrastructure zone to the south (Alison Road). The surrounding development comprises a mix of land uses and built form scales, predominantly characterised by two- and three-storey shop-top housing developments.

Marcellin College is located on the opposite side of Alison Road and Police Station is located to the west of the site at the corner of Alison Road and The Avenue. Adjoining development to the west comprises a three-storey shop-top housing, which is listed as a heritage item under the Randwick LEP 2012. Adjoining development to the rear comprises a group of three-storey Italianate terrace houses, also listed as heritage items under the Randwick LEP 2012. Opposite the laneway at No.206 Alison Road is a three-storey residential flat building.



Figure 1: Subject Site *(Source: Council Officer)*

3. Relevant history

202 Alison Road, Randwick

- DA/29/1982 was approved on 23 March 1983 for alterations to existing shop and dwelling and convert for use as take away food shop.

204 Alison Road, Randwick

- DA/298/2002 was approved on 6 June 2002 for demolition of rear laundry toilet and fence.
- DA/876/2002 was approved on 14 October 2002 for change of use of premises to an internet café.
- PL/60/2015 advice was provided to the applicant on 15 March 2016 for shop top housing.
- PL/75/2016 advice was provided to the applicant on 20 March 2017 for three storey shop top housing development.
- DA/611/2017 was approved on 20 February 2018 for alterations and additions to existing building including new first floor containing two dwellings, roof terrace, ground level additions to rear and associated works (Heritage Conservation Area).

- DA/611/2017/A was approved on 19 June 2018 for Modification of the approved development to delete condition 2 relating to removal of roof over Unit 2 balcony, add doors to all 3 garages and alter floor level of existing commercial area.

202 & 204 Alison Road, Randwick

- PL/29/2024 advice was provided to the applicant on 21 February 2025 for consolidation of site from two (2) lots into one (1) and alterations and additions to an existing shop-top housing development including internal alterations, new garage extension, addition of a new storey comprising an additional two (2) residential units and associated works. The resultant development will comprise a total of two (2) shops, 4 x one (1) Bedroom apartments, 2 x two (2) Bedroom apartments, and five (5) car parking spaces.

Subject Application

- On 28 November 2025, the application was lodged with Council.
- On 16 February 2026, the application was reported to Randwick Design Excellence Advisory Panel (DEAP) to obtain design feedback, which have been attached in Appendix 1.
- On 18 March 2026, a letter was sent to the applicant requesting additional information to address issues including inapropriate design statement, design excellence (DEAP comments), site amalgamation, bulk and scale, privacy impacts, overshadowing impacts, acoustic report, fire engineering report, errors in plans, issues raised in referral comments from Council's Development Engineer and Landscaping Officer, and issues raised in submissions.
- On 24 March 2026, a meeting was held with the applicant discussing the issues raised in the RFI letter. The applicant provided sketches seeking to address the identified assessment issues.
- On 25 March 2026, an email was sent to the applicant with marked-up plans, clarifying the changes required.
- On 15 April 2026, amended plans and documentation were received from the applicant. The key design changes include:
    - Indentation introduced in the middle of eastern and western elevations on the second floor and an altered roof structure centrally located along the eastern side;
    - Increased rear setback on the second floor from nil-1m to nil-2.5m, with a reduced balcony width from 2.4m to 2.15m and introduction of 600mm wide planter box along the rear and western side of the balcony;
    - Provision of a single full-width front balcony on the thrid floor with a minimum width of 1.4m on the western side rather than a small balcony on the eastern side only;
    - Removal of window openings on the eastern side on the second floor except for kitchen and staircase windows;
    - Aluminium blades introduced to the front windows on the west elevation on the first floor to limit the viewing angles; and
    - Internal reconfiguration of Unit 3 layout so that the bedroom is relocated from along the rear wall to along the western side elevation with window openings.
- On 29 April 2026, amended acoustic report was received, correcting minor errors in the report.

4. Proposal

The proposal seeks development consent for alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in 6 x residential units and 4 x car spaces, associated ancillary and landscaping works (Heritage Conservation Area). Specifically, the proposal includes the following:

Site almagamation

- Consolidate the two (2) lots into one (1) lot

Demolition

	No.202 Alison Road	No.204 Alison Road
Ground Floor	Demolition of internal and external walls, windows, doors and the roof.	Demolition of the existing glass balustrade along the ramp to the shop and the western side garage wall to the rear of the building.
First Floor	No demolition works.	Partial demolition of the western side walls in the common area to provide access to new units, and removal of the existing windows to the rear balcony on the eastern elevation

Construction

	No.202 Alison Road	No.204 Alison Road
Ground Floor	• New shop fittings include a new slab, new entry and ramp access and a bathroom at the rear. • A new attached garage at the rear, connecting to the garage at No.204 and accommodating an accessible parking space, bins and bicycle parking.	• Extented ramp to the shop to achieve 6m in length and 1.15m in width • Retention of the existing shop, entry to the residential units above, bin room and garage at the rear
First Floor	• New first floor consists of 2 x new one (1) bedroom apartments, each consist of a bedroom, bathroom, laundry, and open plan kitchen / living / dining area with access to the balcony. • New masonry wall structures and 1.5m high privacy screen along the rear boundary.	• Retention of the existing 2 x one (1) bedroom apartments
Level 2	• New second floor consists of ○ 1 x three (3) bedroom apartment including a master bedroom with ensuite, two bedrooms, a bathroom, laundry, open plan kitchen / living / dining area, and a front balcony accessed from living area and two bedrooms; and ○ 1x two (2) bedroom apartment two bedrooms, a bathroom, laundry, open plan kitchen / living / dining area with access to the rear balcony	

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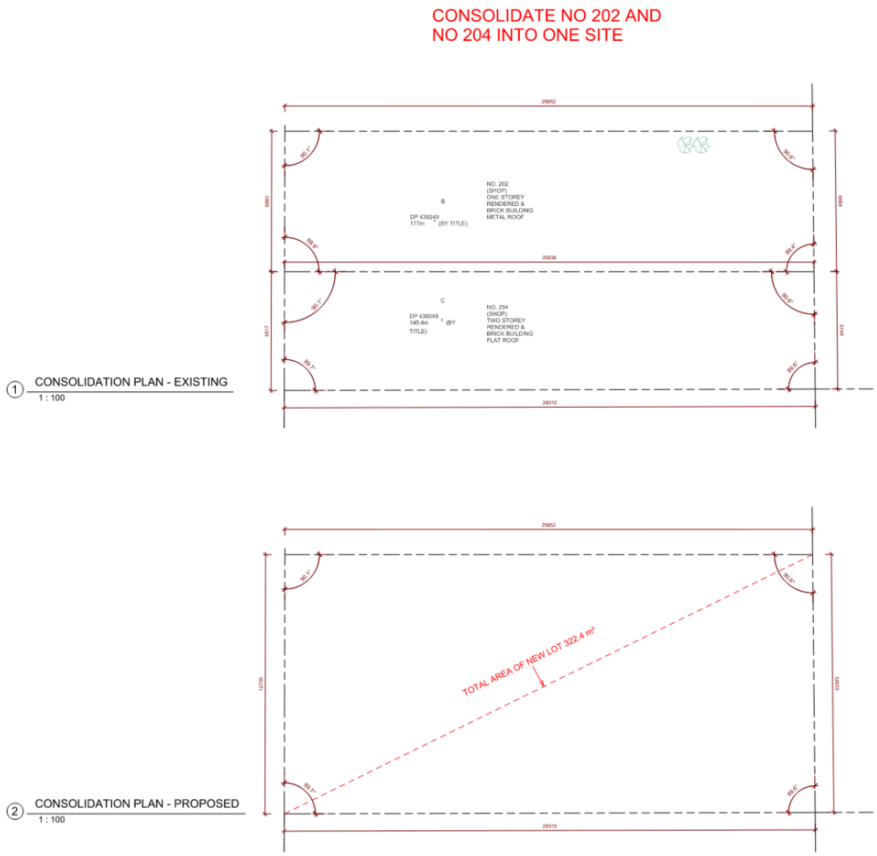


Figure 2: Proposed Site Consolidation Plan *(Source: RK Designs)*

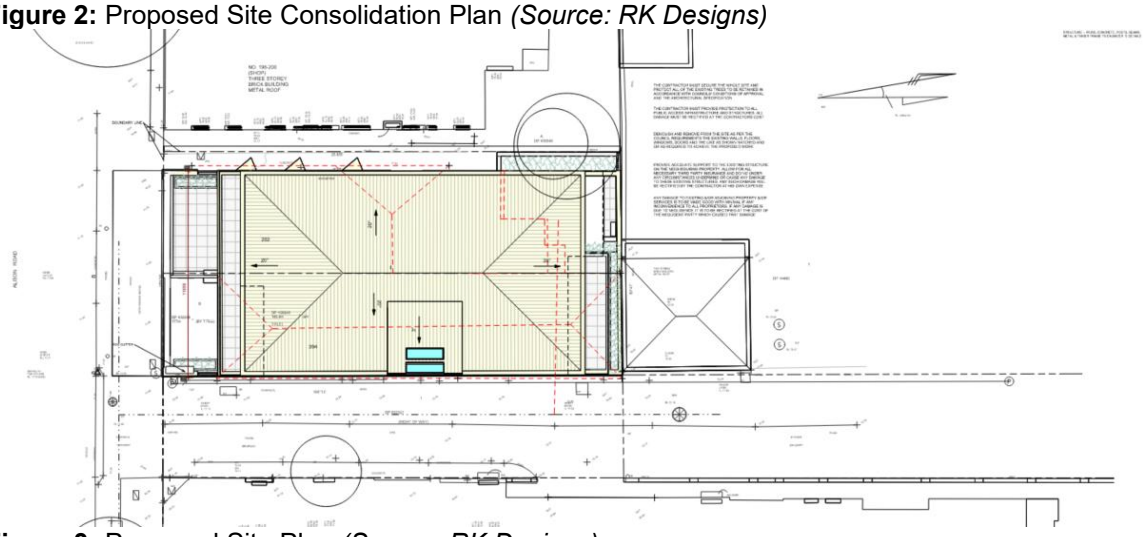


Figure 3: Proposed Site Plan *(Source: RK Designs)*

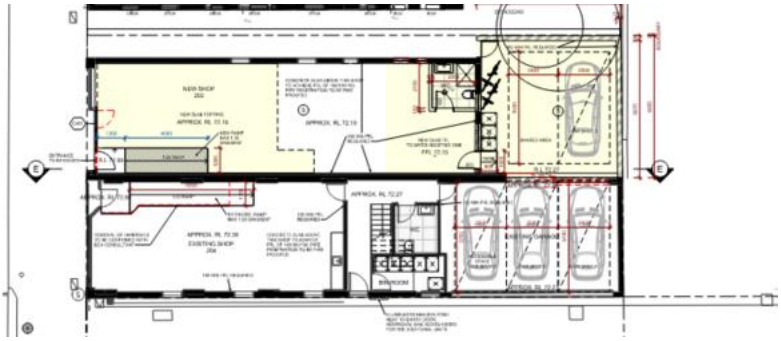


Figure 4: Proposed Ground Floor Plan *(Source: RK Designs)*



Figure 5: Proposed First Floor Plan *(Source: RK Designs)*

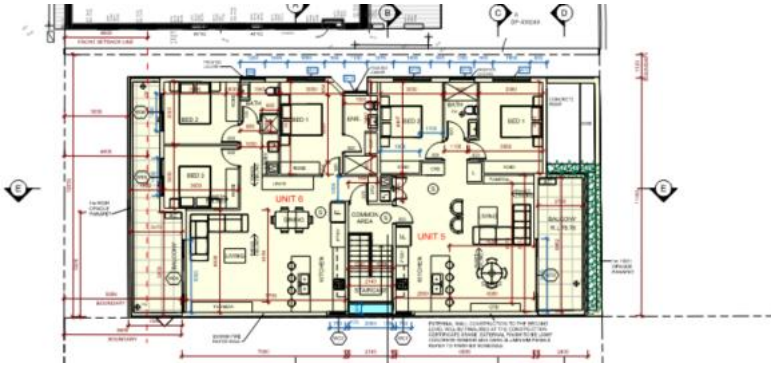


Figure 6: Proposed Second Floor Plan *(Source: RK Designs)*



Figure 7: Proposed Elevations *(Source: RK Designs)*

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:

- 200 Alison Road
- 12/206 Alison Road
- 206 Alison Road, unknown unit number
- 42 The Avenue
- 36 The Avenue

Issue	Comment
Design Practitioner Registration	

Issue	Comment
Inappropriate Design Statement and lack of ADG assessment	A revised Design Verification Statement has been submitted, including the ADG assessment, consistent with EP&A Regulations 2021.
Excessive bulk and scale	Refer to discussions in Key Issues section.
Design excellence not exhibited	Refer to discussion in Design Excellence section.
Non-compliance with ADG	Refer to assessment against ADG in Appendix 2.
Visual privacy impacts	Refer to discussions in Key Issues section.
Acoustic privacy impact	Acoustic impacts have been considered as part of the amenity assessment. An acoustic report prepared by Koikas Acoustics and dated 29 April 2026 has been submitted, which concluded that noise emissions will be negligible to the adjoining property at 200 Alison Road, subject to the recommendations. A condition has been imposed in the draft Notice of Determination to ensure the acoustic recommendations are adopted. In terms of acoustic impacts on adjoining properties, given the residential nature of the proposal and its reasonable scale, it is not considered that the development will result in any detrimental acoustic impacts on neighbouring sites.
Overshadowing impact	Refer to discussions in Key Issues section.
Lack of landscaping, deep soil and canopy cover	Refer to discussions in Key Issues section.
Waste management	Waste management has been reviewed by Council's Development Engineers against DCP requirements. Issues have been identified and addressed by way of conditions in the Notice of Determination. Refer to the referral comments in Appendix 1.
Parking shortfall and tandem parking arrangements	Parking deficiency and layout have been reviewed by Council's Development Engineers against DCP requirements. The acceptability of tandem parking and its operational impacts has been considered, including potential impacts on the laneway. Refer to discussions in Key Issues section.

Issue	Comment
Heritage impacts and lack of contextual response	The proposal has been referred to Council's Heritage Planner, who did not object to the application. Refer to the referral comments in Appendix 1.
Inaccurate FSR calculation	A revised set of plans have been submitted with revised FSR calculation. This have been reviewed and verified by Council as part of the assessment.
Lack of consideration of the draft DCP	It is noted that the draft Development Control Plan (DCP) has not yet been adopted and, as such, the provisions of the draft DCP are not a matter for consideration under the Environmental Planning and Assessment Act 1979.
Increased vehicular traffic in the lane causing further congestion and danger	Traffic generation and access arrangements have been reviewed by Council's development engineers. The increase in vehicle movements is considered acceptable for the existing laneway having regard to the scale of the development. Construction impacts can be mitigated through the imposition of a condition requiring a Construction Management Plan to address vehicle access, parking and lane obstruction during works.
Increased pedestrian traffic and pedestrian safety concerns	The laneway is a carriageway servicing multiple properties. While increased use is acknowledged, the proposal does not introduce a change in function of the laneway. Vehicle movements generated by the development are not considered unreasonable, and standard conditions have been imposed to manage construction impacts and safe access arrangements.
Construction impacts	Construction impacts are acknowledged. In the event of approval, standard conditions would apply, including regulated construction hours, noise controls, site management and complaints handling procedures. Construction activity is overseen by the Principal Certifier, with Council retaining enforcement powers where breaches occur.
Illegal parking and laneway obstruction	Illegal parking is regulated under separate enforcement powers and is not a matter for consideration under the EP&A Act.

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6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

Chapter 4 – Design of residential apartment development

Chapter 4 of the Housing SEPP seeks to improve the design of residential apartment development. The proposed development is subject to Chapter 4 of the Housing SEPP as it for residential flat building containing four (4) dwellings and more than three (3) storeys.

Section 147 of the Housing SEPP states:

> *(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—*
>
> *(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
>
> *(b) the Apartment Design Guide,*
>
> *(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

Design Excellence Advisory Panel

The application was referred to the Panel for advice concerning the design quality of the development. Detailed comments provided by the Panel are provided at Appendix 1.

In response to the Panel's recommendations, the applicant made amendments to the design and a response to each of the matters raised by the Panel is provided within the below table. The assessing officer is satisfied that the amended plans appropriately address most issues raised by the Panel, with the remaining matters resolved through conditions of consent.

DEAP Comment	Response
1. *Context and Neighbourhood Character* *The site has two street frontages and is zoned E2 Commercial Centre. It adjoins an R3 Medium Density Residential zone to the north/rear and an SP2 Infrastructure zone to the south (Alison Road). The site currently comprises two lots with individual shopfronts to Alison Road. The eastern shop accommodates two one-bedroom units behind the street parapet at first-floor level. Surrounding development varies in use and scale.* *The site is not a heritage item but is located within the Randwick Junction Heritage Conservation Area.* *The Panel strongly recommends preparation of a detailed context analysis to identify opportunities and constraints, including mapping surrounding buildings in all directions. The adjacent unnamed laneway exhibits a developing mews-like character that could be strengthened through activation and a more pedestrian-focused frontage.* *Consider:* • *Window placement and scale*	The proposal retains the existing two-storey building elements, including the door and window openings and the eastern elevation façade, with the addition of a second floor above. While the amended plans do not include changes to further activate the existing pedestrian entrance, conditions have been imposed in the draft Notice of Determination requiring the incorporation of wall planting or integrated public artwork to enhance activation and visual interest along the frontage.

• *A more prominent pedestrian entrance to the building* • *Active frontages* • *Wall planting* • *Integrated artwork*	
2. *Built Form and Scale* *The Panel supports the overall scale of the intervention. However, fenestration, balconies and roof form require further refinement. The detailed resolution should draw cues from neighbouring buildings and comparable rooftop additions within Inner Sydney's traditional high streets. The addition is supported as a contemporary intervention but must remain respectful and coherent in relation to its base.* ***Consider:*** • *A single upper-level front setback with a full-width balcony to Alison Road* • *Review of the roof form, particularly the eave extension* • *Alignment of second-floor plan layouts with lower levels and structure*	The proposal has been amended to provide a single upper-level front setback with a full-width balcony to Alison Road. The main roof form remains unchanged as Council's Heritage Planner supported the proposed hipped roof form, which is compatible with the surrounding buildings and does not detract from the adjoining heritage item. The eave extension has been trimmed to minimise perceived bulk. A centrally located protruding roof element has been introduced along the eastern side, aligning with the indentation at second-floor level. This element reads as a deliberate architectural feature, enhances articulation, and adds visual interest while contributing to a reduction in the perceived bulk of the built form. The second-floor plan layouts have been re-configured to better align with the lower levels.

3. *Density* *Density was not discussed in detail. The Panel considers the proposed density to be appropriate.*	Noted.
4. *Sustainability* *No sustainability measures were presented. The Panel recommends incorporating tangible initiatives focusing on thermal comfort and minimising carbon impacts.* ***Consider:*** • *North facing Photovoltaic arrays in consideration of the conservation area context* • *Ceiling fans to all apartments*	A condition has been imposed in the draft Notice of Determination to incorporate the recommended sustainability measures.
5. *Landscape*	Planter boxes have been proposed in and along the edge of the proposed balconies and

While opportunities for landscape are limited, the proposed landscaping is inadequate and requires improvement. *Consider:* *• Landscape screening to the building edge on the northern and southern balconies.* *• Wall planting*	above the ground floor roof at the northwestern corner. Wall planting has been conditioned on the western side of the second floor northern elevation to soften the building façade. It is noted that the eastern elevation wall is on the boundary and is not feasible for any wall planting.
6. *Amenity* *The Panel queries the amenity outcomes proposed, particularly regarding acoustic treatment and fire separation with the narrow side setback. The applicant should demonstrate how acoustics and fire separation are being dealt with, to a less than 1.1m side setback, while still allowing opening windows.* *The Panel suggests:* • *The applicant demonstrates how windows can open and comply with fire and BCA and also provide acoustic details for mechanical fresh air if they are required.* • *A balcony to the rear setback with landscape/architectural screening to pull sight lines back from the leading edge and mitigate overlooking.* • *The applicant should provide views from the sun to confirm the extent of solar access to living rooms and private open spaces.* • *The internal amenity for units be reviewed and requests the applicant update internal layouts to provide higher quality living space. The amenity of Unit 4 is of particular concern, with no outlook or solar access being provided. Verify apartment areas and room dimensions for all units, are in accordance with the minimum standards of the ADG.* • *The applicant updates plans to include unit and balcony areas to assess compliance with the ADG.* • *Confirmation for the use and room configuration of 196–200 Alison Road. The proposal results in significant additional overshadowing of the eastern façade between 9:00am–12:00pm in winter and impacts should be further justified.* • *Clarification of the existing and proposed waste management procedures demonstrating bin presentation arrangements on collection day and*	The applicant has since submitted a Fire Engineering Report prepared by i-Fire Engineers, dated 14 April 2026, and an Acoustic Report prepared by Koikas Acoustics, dated 29 April 2026. Both reports include recommendations for construction, which have been incorporated into the draft Notice of Determination. With the adoption of these recommendations, it is noted that the proposed windows are able to remain operable while still achieving the required fire safety outcomes and appropriate levels of acoustic privacy. Accordingly, the proposal is capable of achieving adequate natural ventilation without reliance on mechanical ventilation. Planter boxes with a minimum width of 600mm are proposed along the northern and western edges of the top-floor balcony. In addition, a condition of consent has been included to require the installation of planter boxes along the eastern elevation to ensure consistent landscape treatment and amenity outcomes. The internal amenity of Unit 4 has been reviewed. The poor access to solar access attributes to the orientation and the site constraints. It is noted that the proposal complies with the ADG requirements that more than 70% of apartments achieve a minimum of 2 hours direct sunlight. Unit and balcony areas are shown on the submitted area calculation plans and are consistent with the requirements of the ADG. The

how waste areas are accessed from retail tenancies. • *Stacking wet areas in plan to accommodate the existing floor to floor heights without compromising ADG ceiling height requirements.* • *Utilise the 2nd floor roof form volume to improve access to light and the quality of the spaces below.*	room dimensions are indicated in floor plans and comply with ADG requirements. The use of rooms within No. 200 Alison Road has been identified on the submitted plans. It is noted, however, that the information provided may be inaccurate, as no living room has been identified, which is inconsistent with the information submitted by No. 200. Notwithstanding this, the kitchen located at the rear of the first floor, which is a living space connected to a small rear balcony, will continue to receive a minimum of two hours of direct sunlight between 9:00 am and 11:00 am. Refer to further discussion on overshadowing impact in Key Issues section. Waste management has been reviewed by Council's Development Engineer, who identified issues and addressed by way of conditions in the draft Notice of Determination. The proposed 3.1m floor-to-floor height and 2.7m ceiling height complies with ADG requirements. Skylights were limited to the common circulation area. The living areas and habitable rooms of Unit 5 will receive ample solar and daylight access from the proposed windows. A condition of consent has been imposed requiring the introduction of highlight windows to the eastern elevation and the provision of skylights to the open-plan living, dining, and kitchen area of Unit 6. These measures are intended to improve solar access and internal amenity outcomes for the dwelling.

7. *Safety* *Revised levels to Shop 202 should avoid steps into the tenancy. The street interface should be on grade and universally accessible- without the use of a ramp.* *Confirmation is required that stacked parking complies with accessible parking provisions.*	Lowering the finished floor level (FFL) of the shop may assist in removing the need for a ramp at the shopfront. However, an internal ramp would still be required to provide access to the central portion of the tenancy, where the concrete slab FFL is at RL 72.15. This level is

	constrained due to structural and fire-resistance requirements, limiting the ability to achieve a compliant transition without internal ramping. Having regard to these constraints, the provision of a ramp within the front of the shop is considered the most practical and appropriate solution to ensure compliant access while maintaining functional internal layout and fire safety requirements. Accessible parking is not required and has been conditioned to be removed.
8. *Housing Diversity and Social Interaction* *Adaptable units must be provided in accordance with RDCP requirements.*	Section 3 Adaptable Housing in Part C3 Adaptable & Universal Housing and Boarding Houses does not apply to the subject application as the proposal does not involve 10 or more dwellings.
9. *Aesthetics* *The proposed addition requires further refinement to ensure compatibility and suitability within its context. The material and building expression should draw from its context for a more sensitive and successful intervention that benefits its corner position within the conservation area.* *The modern expression for the upper level is supported, but this needs to be more considered. The Panel suggests the applicant make specific references to materiality and composition to suit its intended use and the context.* *Consideration should be given to the building's materials to ensure a cohesive and respectful expression when viewed from both streets.*	Council's Heritage Planner has imposed a condition requiring a darker shade of grey exposed concrete for the upper-level addition, which has been imposed in the draft Notice of Determination.

Design Quality Principles

The comments provided by the Panel (refer to Appendix 1) detail how each of the nine (9) quality design principals have been considered in the proposal.

Apartment Design Guide

Appendix 2 provides an assessment of the proposal against the relevant design criteria contained in parts 3 and 4 of the Apartment Design Guidelines. In cases where the development does not satisfy the relevant criteria, the design guidance has been used to determine whether the proposal still meets the relevant objectives.

Non-discretionary Development Standards

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

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

Assessing officer's comment: The parking deficiency has been detailed in the referral comments from Development Engineer and justified in the Key Issues section.

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

Assessing officer's comment: Each proposed apartment provides an internal area greater than the minimum internal area required.

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

Assessing officer's comment: The proposed ceiling heights for the building are greater than the minimum ceiling heights required.

6.2. SEPP (Sustainable Buildings) 2022

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

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

The proposal does not involve removal of trees noting the town centre context of the site.

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

Chapter 4 of the Resilience and Hazards SEPP requires Council to consider the likelihood that the site has been contaminated and to address the methods necessary to remediate the site.

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

6.5. SEPP (Transport and Infrastructure) 2021

Section 2.119 Development with frontage to classified road of the Transport and Infrastructure SEPP requires the consent authority to be satisfied that:

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

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(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The proposal was referred to TfNSW, who did not object to the proposal, subject to conditions.

The proposal does not involve new vehicular access to Alison Road and will not adversely affect the safety, efficiency and ongoing operation of the classified road.

An acoustic report prepared by Koikas Acoustics and dated 29 April 2026 was submitted with the application, which concluded that the proposal will achieve appropriate acoustic privacy subject to the adoption of the recommendations in the report. As such, a condition has been imposed in the draft Notice of Determination to ensure the recommendations are adopted.

6.6. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential E2 Commercial Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone 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 4.3: Building height (max)	12m	11.818m / RL83.80	Yes
Cl 4.4: Floor space ratio (max)	2:1	1.83:1 / 600.9sqm	Yes

6.6.1. Clause 5.10 - Heritage conservation

The subject site is located within the Randwick Junction Heritage Conservation Area (HCA) and is located wihitn close proximity to a number of heritage items. The proposal was referred to Council's Heritage Planner, who did not object to the proposal subject to conditions. Refer to the referral comments in Appendix 1.



Figure 8: Aerial view of the subject site with Heritage layer *(Source: NearMap)*

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 3.
Note: Clause 149 of the Housing SEPP states:

(1) A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—
(a) visual privacy,
(b) solar and daylight access,
(c) common circulation and spaces,
(d) apartment size and layout,
(e) ceiling heights,
(f) private open space and balconies,
(g) natural ventilation,
(h) storage.
(2) This section applies regardless of when the development control plan was made.

Consequently, where the Randwick DCP provides controls in relation to the matters listed in item (1), the assessment has been made against the relevant controls in parts 3 and 4 of the ADG (refer to appendix 2) rather than those in the DCP.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant residential character 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 issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

Bulk and Scale / Non-compliant Building Depth

RDCP 2013 prescribes a maximum building depth of 14 metres. The proposal provides a building depth of 20.57 metres at first-floor level and 18.71 metres at second-floor level and is therefore non-compliant with the numeric control.

In response to the identified non-compliance, the amended plans introduce indentations centrally located along the eastern and western elevations at first- and second-floor levels, together with a reconfigured roof form along the eastern elevation. These design measures add a visual break to the building mass, reduce the apparent building depth when viewed from surrounding properties, and provide articulation consistent with the established character of the streetscape.

The second-floor built form has also been refined through an increased rear setback, which has been increased from between nil and 1 metre to between nil and 2.5 metres. This setback is complemented by a reduction in the rear balcony depth from 2.4 metres to 2.15 metres and the introduction of 600mm-wide planter boxes along the rear and western edges of the balcony. Additionally, a single full-width front balcony with a minimum width of 1.4 metres has been provided along the front elevation, replacing the previously proposed smaller balcony located solely on the eastern side. These measures further reduce the perceived scale of the upper levels, soften the built form, reduce the visual dominance of the upper storey when viewed from the public domain and improve the transition to adjoining development.

In addition to the above design amendments, a condition has been included in the draft Notice of Determination requiring the roof element above the staircase to be lowered. This further refinement will reduce the visual bulk of the roof structure while retaining appropriate architectural articulation. The resulting roof form will be similar to that depicted in the submitted photomontages, albeit with a reduced height.

When considered collectively, these design responses significantly mitigate the perceived bulk and scale. The amended built form achieves an acceptable relationship with surrounding development and is considered appropriate within the established urban context, notwithstanding the departure from the numerical RDCP control of building depth.



Figure 9: Proposed Photomontage (*Source: RK Design*)

Nil Provision of Landscaped Open Space or Deep Soil Area

Section 2.2 in Part C2 of RDCP requires a minimum of 50% of the site area to be landscaped open space. Part 3E of ADG requires a minimum of 7% deep soil area. The proposal provides nil landscaped open space or deep soil area.

The site is zoned E2 Commercial Centre and is located within Randwick Junction Centre, an established and highly urbanised centre characterised by a dense built form, minimal setbacks, and limited opportunities for ground-level landscaping. The zoning encourages a mix of residential and commercial uses in a compact, centre-based environment, where deep soil areas are inherently constrained and not a defining characteristic of the desired future character.

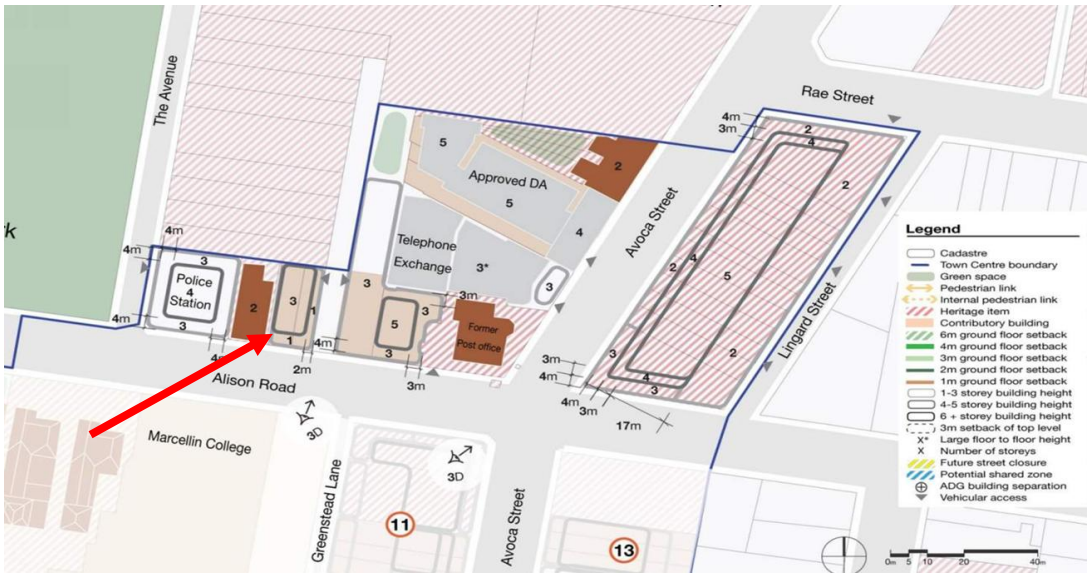


Figure 10: Extract of Anticipated Building Setbacks in Draft DCP 2025 (*Source: Randwick City Council*)

The site is fully developed and constrained by its urban form, with no practical capacity to introduce meaningful landscaped open space or deep soil areas that would satisfy the objectives of the control. It is noted that Draft DCP 2025 – D2 Randwick Junction Town Centre anticipates a building envelope with nil provision of landscaped open space or deep soil area for this site and surrounding properties within the Randwick Junction Centre. While the draft DCP does not form part of the statutory assessment framework under the EP&A Act 1979 and has not been relied upon in the formal assessment of the application, it nevertheless provides a clear indication of Council's strategic vision for future development within the centre and reinforces the appropriateness of a nil deep soil outcome in this context.

Notwithstanding the absence of deep soil, landscape outcomes are addressed through alternative measures appropriate to the site context. Planter boxes have been incorporated where feasible, including within balcony areas, to introduce vegetation, soften the built form, and contribute to visual amenity. Additionally, a condition has been included in the draft Notice of Determination to introduce green walls. These measures provide an appropriate landscaped response consistent with the highly urbanised commercial centre setting.

Having regard to the site's zoning, location within Randwick Junction Centre, existing constraints, and the nature of surrounding development, the nil provision of landscaped open space and deep soil area is considered acceptable on merit.

Non-compliant Building Separation Distances & Visual Privacy Impacts

ADG requires 6m building separation distances to side and rear boundaries from habitable rooms and 3m from non-habitable rooms.

The proposal provides the following side and rear setbacks, which do not comply:

- Northern / rear setback = nil – 2.5m.
- Eastern side setback = nil- 600mm

- Western side setback = 1.1-1.77m

Notwithstanding the non-compliance with the prescribed building separation distances, a reasonable level of visual privacy has been achieved for both the subject site and adjoining properties as discussed below:

- Rear Elevation

  Blank walls have been proposed on the first floor, which have nil privacy impacts and are consistent with the existing walls within No.204. The second floor balcony has been amended to address the privacy concerns on the rear adjoining properties by having 600mm wide planter boxes wrapped around the balcony, which insets potential view back from the balcony edge. A condition has been imposed within the draft Notice of Determination to have suitable screening planting within the planter boxes to further mitigate the impact.

- Eastern Elevation

  The proposal does not introduce any new window openings to the existing two storeys on the eastern elevation. Existing windows to the rear first-floor balcony are proposed to be removed to facilitate an open balcony configuration, which does not result in any greater privacy impacts on adjoining properties.

  On the second floor, windows have been removed in the amended plans to address privacy concerns, with the exception of windows to the staircase and kitchen windows located adjacent to the staircase. The windows servicing the staircase are associated with circulation spaces only, which are low-use transient areas, and therefore result in minimal amenity and privacy impacts on adjoining properties. The kitchen windows are narrow, positioned above the kitchen bench, and are unlikely to result in direct overlooking or adverse privacy impacts to neighbouring properties.

  The front balcony proposed on the second floor is offset from neighbouring windows and is considered to have minimal privacy impacts. While the rear second floor balcony directly faces the balcony of a top-floor apartment at No. 206 Alison Road, a condition has been included in the draft Notice of Determination requiring the installation of 600 mm-wide planter boxes along the balcony edge, together with suitable screening vegetation, to effectively mitigate potential privacy impacts.

- Western Elevation

  On the first floor, aluminium blades are proposed to the front three windows to restrict viewing angles and prevent direct sight lines into neighbouring windows. Frosted louvres are proposed to bathroom windows to appropriately mitigate privacy impacts.

  The bedroom window faces the stairwell of No. 200 Alison Road, which is a circulation space, and therefore results in minimal privacy impacts. Any potential sight lines from the living room window and balcony toward the adjoining property will be effectively screened by planting, which is secured by a condition on the concrete roof of the ground floor.

  On the second floor, the proposed windows are offset from neighbouring windows, which minimise any overlooking impacts. A condition has been imposed within the draft Notice of Determination to require privacy measures to Bedroom windows of Unit 5 to minimise overlooking into the neighbouring rear yard.

<u>Overshadowing Impacts on Adjoining Properties</u>

For apartment buildings and shoptop housings, ADG requires living rooms and private open spaces of at least 70% of apartments in a building to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. For dwellings, RDCP 2013 requires a part of a window to living areas and at least 50% of the landscaped areas to receive a minimum of 3 hours directs sunlight between 8am and 4pm on 21 June (mid winter).

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- Impact on No. 200 Alison Road

The applicant has submitted existing and proposed shadow diagrams and elevation shadow diagrams, with the use of rooms clearly identified. It is noted, however, that the information provided may be inaccurate, as no living room has been identified on the plans for No. 200 Alison Road, which is inconsistent with the information submitted by that property. Notwithstanding this inconsistency, the submitted material provides a sufficient basis to assess the overshadowing impacts of the proposal.

The shadow diagrams demonstrate that the proposal will result in additional overshadowing to the ground-floor and first-floor windows of the adjoining property at no.200. These windows predominantly service commercial floor space rather than habitable residential rooms. As such, while some increase in overshadowing occurs, the impact is considered to be of lesser significance, as the affected areas do not rely on solar access to the same extent as residential living rooms or principal private open spaces.

Importantly, the kitchen located at the rear of the first floor of No. 200 Alison Road, which functions as a living area and is directly connected to a small rear balcony, will continue to receive direct sunlight between 9:00 am and 11:00 am. While an 8:00 am shadow diagram has not been provided, it is reasonably anticipated that a portion of the kitchen window would receive direct sunlight at that time. On this basis, it is considered that No. 200 Alison Road will continue to receive in excess of three hours of direct sunlight between 8:00 am and 11:00 am at mid-winter, which complies.

The private open space associated with the adjoining residential accommodation will continue to receive more than three hours of direct sunlight between 9:00 am and 12:00 pm, which complies with the control requirement.

When assessed in its entirety, the overshadowing impacts of the proposal are considered reasonable and acceptable within the context of a dense urban centre. The proposal prioritises solar access to habitable rooms and private open space, while any overshadowing impacts are largely confined to non-habitable commercial areas. Accordingly, the proposal is considered to achieve an appropriate balance between site redevelopment and the protection of neighbouring amenity.

- Impact on No. 206 Alison Road

The applicant has submitted existing and proposed shadow diagrams, including elevation shadow diagrams. The diagrams indicate that windows on the western elevation of No. 206 Alison Road commence receiving direct sunlight from approximately 12:00 pm. The proposal does not result in any additional overshadowing impacts to No. 206 at 12:00 pm or 1:00 pm when compared to the existing conditions.

At 2:00 pm, the proposal will result in overshadowing to the front apartment on Level 1 of No. 206. By 3:00 pm, overshadowing will extend to the front apartments on both Level 1 and Level 2. Notwithstanding this, the front apartment on Level 2 will continue to receive in excess of two hours of direct sunlight between 12:00 pm and 2:00 pm, which is consistent with the minimum 2 hours requirements in ADG.

While the front apartment on Level 1 will not achieve a minimum of two hours of direct sunlight, the solar access performance of the apartment building at No. 206, when assessed as a whole, demonstrates that a minimum of 70% of apartments will continue to receive at least two hours of direct sunlight. This outcome is consistent with ADG requirements. The resulting overshadowing impacts on the front apartment on Level 1 arises from a built form that is consistent with the development envelope anticipated for the site under the RDCP 2013. Furthermore, having regard to the site constraints and the need to balance development outcomes with amenity considerations, it is considered that no alternative or more skilful design solution could reasonably achieve the same development outcome while materially improving solar access.

At 3pm, the proposal will cast partial shadowing over a small portion of the front window of the middle apartment on Level 2 and the front window of the middle apartment on Level 1. These

apartments will nevertheless continue to receive more than two hours of direct sunlight between 12:00 pm and 2:00 pm to their living rooms and associated private open space areas.

Overall, the overshadowing impacts of the proposal on No. 206 Alison Road are considered acceptable in the context of the anticipated built form under the RDCP 2013. While the front apartment on Level 1 does not achieve the minimum two hours of direct sunlight, the majority of affected apartments continue to receive adequate solar access and the apartment building will continue to receive overall compliant solar access, consistent with ADG requirements. The impacts on this Unit arise from a built form that reflects the site's planning controls and constraints. On balance, the proposal achieves an appropriate relationship with adjoining development and is thus considered acceptable.

Deficiency in Parking

In accordance with the Guide to Transport Impact assessment (GITA), the proposal generates a requirement for four (4) additional parking spaces. The proposal provides one (1) additional parking space and is therefore deficient by three (3) spaces. Notwithstanding this numerical shortfall, the reduced parking provision is considered acceptable on merit, having regard to the site context and the supporting information submitted.

To address the parking deficiency, the applicant has submitted a Traffic and Parking Impact Assessment prepared by Hemanote Consultants and dated November 2025, together with a Public Transport and Accessibility Green Travel Plan, prepared by Alcahosa, dated March 2026. The reports conclude that the traffic generation associated with the proposal will be minor and can be safely accommodated by Alison Road, and that the parking shortfall can be supported given the site's high level of accessibility to public transport (light rail and bus services) and the availability of alternative green travel options (onsite bike storage). The site is located within an established centre with services available in walking distance.

Concerns relating to the proposed tandem parking arrangement and parking allocations have been addressed through conditions included in the draft Notice of Determination, ensuring that parking is appropriately managed and does not result in unreasonable impacts on the laneway and the surrounding road network.

Having regard to the site's location within an established centre and its accessibility to public and active transport options, the parking deficiency is considered acceptable and is not expected to result in adverse traffic or parking impacts within the locality.

9. Conclusion

That the application to alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in 6 x residential units and 4 x car spaces, associated ancillary and landscaping works (Heritage Conservation Area). 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 RDCP 2013.
- The proposal is consistent with the objectives contained within the Housing SEPP.
- 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.
- Non-standard conditions requiring design amendments have been included to further mitigate the impacts.

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Appendix 1: Referrals

1. Design Excellence Panel Comments

Randwick Design Excellence Advisory Panel
Final Endorsed Comments

DA INFORMATION	
Application Number	DA/1267/2025
Address	202-204 Alison Road, RANDWICK NSW 2031
Meeting Date	16th February 2026
Panel Members	Rachid Andary (chair)
	Jonathan Knapp
	Peter St Clair
Report Date	20th February 2026

INTRODUCTION

This document summarises the advice and recommendations arising from the Design Excellence Advisory Panel (DEAP) meeting held in relation to the above application.

The DEAP's comments are provided to assist Council in its design assessment of the application, including consideration against Chapter 4 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and the Design Quality Principles for residential apartment development (as applicable).

The DEAP is appointed by Randwick City Council as an independent advisory body and is not the consent authority. The written and verbal comments constitute the professional design advice of the Panel members. The Panel comprises suitably qualified experts in architecture, planning, urban design, heritage and landscape architecture.

In response to the DEAP's comments, the Applicant may be requested to submit amended plans. Prior to preparing any amended plans, the Applicant must consult with the relevant Council assessing officer to discuss the Panel's advice and any additional matters requiring amendment. Any amended plans submitted to Council must be accompanied by a written response detailing how each of the DEAP's comments has been satisfactorily addressed.

PANEL COMMENTS

The Panel thanked the design team for attending the DEAP. The applicant's planner and architect presented architectural drawings dated 16/06/2025.

The Panel acknowledges the improvements made since the Pre-DA process and supports the extension of shoptop housing and the overall scale of the proposed development within its context. However, the Panel has concerns regarding the quality of the project's detailed resolution.

1. Context and Neighbourhood Character

The site has two street frontages and is zoned E2 Commercial Centre. It adjoins an R3 Medium Density Residential zone to the north/rear and an SP2 Infrastructure zone to the south (Alison Road). The site currently comprises two lots with individual shopfronts to Alison Road. The eastern shop accommodates two one-bedroom units behind the street parapet at first-floor level. Surrounding development varies in use and scale.

The site is not a heritage item but is located within the Randwick Junction Heritage Conservation Area.

The Panel strongly recommends preparation of a detailed context analysis to identify opportunities and constraints, including mapping surrounding buildings in all directions. The adjacent unnamed laneway exhibits a developing mews-like character that could be strengthened through activation and a more pedestrian-focused frontage.

Consider:

- Window placement and scale
- A more prominent pedestrian entrance to the building
- Active frontages
- Wall planting
- Integrated artwork

2. Built Form and Scale

The Panel supports the overall scale of the intervention. However, fenestration, balconies and roof form require further refinement. The detailed resolution should draw cues from neighbouring buildings and comparable rooftop additions within Inner Sydney's traditional high streets. The addition is supported as a contemporary intervention but must remain respectful and coherent in relation to its base.

Consider:

- A single upper-level front setback with a full-width balcony to Alison Road
- Review of the roof form, particularly the eave extension
- Alignment of second-floor plan layouts with lower levels and structure

3. Density

Density was not discussed in detail. The Panel considers the proposed density to be appropriate.

4. Sustainability

No sustainability measures were presented. The Panel recommends incorporating tangible initiatives focusing on thermal comfort and minimising carbon impacts.

Consider:

- North facing Photovoltaic arrays in consideration of the conservation area context.
- Ceiling fans to all apartments

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5. Landscape

While opportunities for landscape are limited, the proposed landscaping is inadequate and requires improvement.

Consider:

- Landscape screening to the building edge on the northern and southern balconies.
- Wall planting

6. Amenity

The panel queries the amenity outcomes proposed, particularly regarding acoustic treatment and fire separation with the narrow side setback. The applicant should demonstrate how acoustics and fire separation are being dealt with, to a less than 1.1m side setback, while still allowing opening windows.

The panel suggests:

- The applicant demonstrates how windows can open and comply with fire and BCA and also provide acoustic details for mechanical fresh air if they are required.
- A balcony to the rear setback with landscape/ architectural screening to pull sight lines back from the leading edge and mitigate overlooking.
- The applicant should provide views from the sun to confirm the extent of solar access to living rooms and private open spaces.
- The internal amenity for units be reviewed and requests the applicant update internal layouts to provide higher quality living space. The amenity of Unit 4 is of particular concern, with no outlook or solar access being provided. Verify apartment areas and room dimensions for all units, are in accordance with the minimum standards of the ADG.
- The applicant updates plans to include unit and balcony areas to assess compliance with the ADG.
- Confirmation for the use and room configuration of 196–200 Alison Road. The proposal results in significant additional overshadowing of the eastern façade between 9:00am–12:00pm in winter and impacts should be further justified.
- Clarification of the existing and proposed waste management procedures demonstrating bin presentation arrangements on collection day and how waste areas are accessed from retail tenancies.
- Stacking wet areas in plan to accommodate the existing floor to floor heights without compromising ADG ceiling height requirements.
- Utilise the 2nd floor roof form volume to improve access to light and the quality of the spaces below.

7. Safety

Revised levels to Shop 202 should avoid steps into the tenancy. The street interface should be on grade and universally accessible- without the use of a ramp.

Confirmation is required that stacked parking complies with accessible parking provisions.

8. Housing Diversity and Social Interaction

Adaptable units must be provided in accordance with RDCP requirements.

9. Aesthetics

The proposed addition requires further refinement to ensure compatibility and suitability within its context.

The material and building expression should draw from its context for a more sensitive and successful intervention that benefits its corner position within the conservation area.

The modern expression for the upper level is supported, but this needs to be more considered. The panel suggests the applicant make specific references to materiality and composition to suit its intended use and the context.

Consideration should be given to the buildings materials to ensure a cohesive and respectful expression when viewed from both streets.

SUMMARY

The Panel does not support the proposal in its current form.

The application requires refinement of building expression and form, along with a review of planning and design resolution to ensure compliance with the Apartment Design Guide and relevant policy requirements.

The Panel welcomes the opportunity to review a substantially revised proposal at a future Design Excellence Advisory Panel meeting.

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2. External referral comments:

2.1. Transport NSW

Transport for NSW

24 December 2025

TfNSW Reference: SYD25-02559/01
Council's Reference: DA/1276/2025 (CNR-90128)

Mr Ray Brownlee
Chief Executive Officer
Randwick City Council
30 Frances Street
Randwick NSW 2031

Attention: Ray Brownlee

ALTERATIONS AND ADDITIONS TO SHOP TOP HOUSING
202-204 ALISON ROAD, RANDWICK

Dear Mr Brownlee,

Reference is made to Council's referral regarding the abovementioned application which was referred to Transport for NSW (**TfNSW**) for comment under *2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021*.

TfNSW has reviewed the submission and would provide concurrence to the proposed civil works under Section 138 of the *Roads Act 1993*, subject to Council's approval and the following requirements being included in the development consent:

1. All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property unlimited in height or depth along the Alison Road boundary.

2. Any proposed public utility adjustment/relocation works on the state road network will require detailed civil design plans for road opening/underboring to be submitted to TfNSW for review and acceptance prior to the commencement of any works. The developer must also obtain any necessary approvals from the various public utility authorities and/or their agents. Please send all documentation to development.sydney@transport.nsw.gov.au. A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.

3. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system on Alison Road are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.

4. A Road Occupancy Licence (**ROL**) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Alison Road during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf

Should you have any further inquiries in relation to this matter, please do not hesitate to contact Jason Liang, Land Use Planner by email at development.sydney@transport.nsw.gov.au

Yours sincerely

Aleks Tancevski
Senior Manager Land Use Assessment Eastern
Transport Planning Branch
Planning, Integration and Passenger

OFFICIAL
4 Parramatta Square, Parramatta NSW 2150
PO Box 973 Parramatta CBD NSW 2124
W transport.nsw.gov.au

3. Internal referral comments:

3.1. Heritage planner

The Site
The subject site at 202-204 Alison Road is a contributory building located within the Randwick Junction Heritage Conservation area (HCA). The site is adjoining locally listed heritage item I260 at 200 Alison Road - a building of special architectural interest for its highly individual design unconstrained by period fashions. The heritage item at 200 Alison Road has good streetscape contribution and part of Randwick's commercial history.

The subject site is also located within direct proximity to a number of heritage items including but not limited to the following:
- *'Stone commercial building', 200 Alison Road (item no. I260)*
- *'Former Randwick Post Office', 124 Avoca Street or 206A Alison Road (item no. I274)*
- *'Avonmore Terrace', 26-42 the Avenue (item no. I454)*
- *'Commercial building', 126-128 Avoca Street (item no. I276)*
- *'Glanmire, Victorian house', 193 Alison Road (item no. I259)*

Background
Approved DA/611/2017 - Alterations and additions to existing building including new first floor containing two dwellings, roof terrace, ground level additions to rear and associated works
Pre-DA application pl/29/2024 for Consolidation of site from two (2) lots into one (1) and alterations and additions to an existing shop-top housing development including internal alterations, new garage extension, addition of a new storey comprising an additional two (2) residential units and associated works

Proposal
Alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in 6 x residential units and 4 x car spaces, associated ancillary and landscaping works

Submission
D05940714 – HIS
D05940753 – Architectural drawings

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

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

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

Comments

The proposed additions/modifications to the existing semi-detached commercial buildings, to allow for the addition of residential accommodation, appears consistent with RDCP and is considered acceptable from a heritage perspective.

To be more visually recessive it is recommended to use a darker shade of grey exposed concrete (avoid black colours and materials) for the upper-level addition.

3.2. Development Engineer

General Comments
The application is not supported in its current form on parking and waste management grounds. At the request of the assessing officer conditions have been provided to address the issues as far as practical.

Transport For NSW Comments
The assessing officer is advised that Alison Road is classified as a state road at this location and consequently a referral to Transport For NSW was required.

Transport for NSW Comments and conditions have not been included in this report but are included in document D05975980

Parking Comments

Parking Assessment under Part B7 of the DCP
The following parking rates from Part B7 of Council DCP have been considered in this assessment

Residential
1 space per 1 bedroom unit
1.2 spaces per 2-bedroom unit
1.5 space per 3-bedroom unit
1 visitor space per 4 units

Commercial
1 space per 40m2

Existing Situation
The existing development comprises of ground floor commercial with a GFA of 104.2m2 at 202 Alison Rd and GFA of 63.4m2 at 204 Alison Rd. There is also existing a 2 x 1-bedroom units on the first floor at 204 Alison Rd.

Under the parking rates specified in Part B7 of the DCP the existing development would generate a parking demand of 4.2 spaces for the commercial component and 2 spaces for the residential component being a total of 6 spaces when rounded.

The site currently only provides 3 spaces located within the existing garage fronting the adjacent Rght of Way and so is experiencing a shortfall of 3 spaces under the DCP.

Proposed Development

The proposed development will retain the existing commercial tenancies although there will be a minor reduction of the GFA at 202 Alison Road to 97.7m2. This will only reduce parking demand by about 0.2 spaces based on the DCP rates.

The residential component will retain the two x 1 bedroom units but will now add a further 4 residential units comprising of 2 x 1-bedroom units, 1 x 2 bedroom, & 1 x 3 bedroom units.

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

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

Hence only the newly proposed 4 residential units will impact parking demand and are considered below

Parking demand for the proposed 4 additional units is calculated as follows

Additional Parking required under B7 of DCP = *(2 x 1.0) + (1 x 1.2) + (1 x 1.5) + 1(visitor)*
= *5.7*
= ***6 spaces (including 1 visitor space)***

Additional Parking provided = *1 space*

Parking Shortfall = ***5 spaces***

When assessed against the DCP parking rates the proposed development ***has not adequately provided for the additional parking demand.***

Comments on Parking Shortfall
It is acknowledged the parking rates in the DCP are generalised rates and do not take into account proximity to public transport and town centres. In this regard the following characteristics of the site are noted;

- *The site is located within 600m of the Randwick Terminus of the SE Light rail (L2 line)*
- *Frequent bus services operate along Alison Road, Avoca st and Belmore Road in close proximity to the site including destinations such as the City, Bondi Junction, Marouba Junction, Coogee, and Eastgardens Pagewood*
- *The site is located in close proximity to a number of carshare pods operated by Goget Carshare with the closest being located within The Avenue (being about 100m from the site)*
- *The site is located within close proximity to Randwick Town Centre containing a number of amenities including but not limited to, grocery stores, restaurants & cafes, OP shops , medical centres & Randwick library.*

It is therefore apparent the site is well situated to reduce dependence on motor vehicles and a reduction in the parking requirements is considered appropriate in this instance. In this regard Development Engineering is guided by the document Guide to Transport Impact Assessment (GITA) published by Transport for NSW in determining an appropriate amount of parking for the additional residential component.

Assessment under the Guide to Transport Impact assessment (GITA) from Transport for NSW
Under the GITA the site is considered a Category 1 development (close to public transport) with the applicable residential parking rates defined in Table 8.3 (Medium density <20 units) Section 8.5.2 of the GTIA as;

- *0.5 spaces per studio/1 bedroom unit*
- *0.8 spaces per 2-bedroom dwelling*
- *1.2 spaces per 3-bedroom unit*
- *1 visitor space per 5 dwellings*

Additional Residential Parking Required under GTIA = *(2 x 0.5) + (1x 0.8) + (1 x 1.2) + 0 visitor*
= *2.0 + 0.8 + 1.2* `
= ***4 spaces***

Note that visitor parking is no longer required for additional component

Additional parking provided = 1 space

Additional parking shortfall = ***3 spaces***

It can be seen that even when allowing for significant parking discounts and site location the proposed development will still have a parking shortfall of at least 3 spaces. This is excessive and is not supported by Development Engineering especially considering the existing development would likely comply with the reduced parking rates in GITA.

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There are very high parking pressures in this locality with most of the on-street parking in the immediate locality time restricted between 30min and 2hrs.

Should the application be approved it is recommended that all prospective owners and tenants of the building must be notified that Council will not issue any new residential parking permits to occupants/tenants of this development to discourage car ownership and minimise parking demand. A suitable condition has been included in this report.

Parking Layout Comments

The proposed layout will be problematic and is not supported in its current form. Car spots 1 & 3 which are tandem will obviously have to be allocated to same unit (3 bedroom). As one of these is a disabled spot this may not be appropriate if the one or two bedroom unit requires it

Access to the bicycle spaces and waste bins is problematic as the front carspaces are all obstructing access. To rectify, the following is proposed.

- *The accessible space is to be deleted with the shared zone to be replaced by a standard carspace.*
- *The resulting two carspaces at the rear of the garage are to be located as far as practical to the western and northern walls to improve access to the waste bins and bicycle parking.*
- *If structurally feasible, the opening between the existing and proposed garages shall be widened as far as practical to improve access for vehicles, bicycles and waste bins in the rear garage.*
- *Car spot 2 being immediately in front of the shared zone is to be deleted and kept clear to provide access to the carspace required by a) above and provide suitable access to waste bins and bicycle parking.*

A suitable non-standard condition has been included in this report

Bicycle Parking

Under Part B7 of the DCP bicycle parking is to be provide at the rate of 1 space per 2 units. For the proposed 4 additional units this will amount to 2 spaces.

These have been provided however access would be problematic as they are situated near the back of the garage and if the front 3 cars spaces are occupied it would be difficult to exit the garage

Waste Management Comments

The additional 4 units would generate a waste demand for 4 x 240L bins comprising of 2 x 240L bins for general waste and 2 x 240L bins for recycling which in addition to the demand for the existing 2 x 1bedroom units would generate a total of 7 x 240L bins comprising 3 garbage, 3 recycling, 1 Fogo.

It is not clear where the waste storage for the different commercial and residential components will be and it is apparent there is not sufficient room for the required number of bins. They will need at least 7 x 240L bins for the residential component however they have only show 3 although this may be the storage for the commercial component for 202 Alison Road as it is not labelled.

Movement of bins for presentation will be problematic as the front car spots are all in the way to move the bins (see parking layout comments)

It is noted there is another bin room immediately adjacent to the right of Way within 204. This appears to be for commercial tenancy at 204 Alison Road however it is not labelled.

Bin storage for the residential and commercial component will have to be clearly labelled and physically separated.

With some though there appears to be sufficient room on the site to provide the required number of bins however there is some reconfiguration required and the submitted waste management plan should not be approved a spart of this consent as it does not address these issues.

Conditions requiring suitable amendments and an amended Waste Management Plan (to be approved prior not CC) has been included in this report.

Drainage Comments

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

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

a) *To the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system); OR*

b) *Through a private drainage easement(s) to Council's underground drainage 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 not** located within 15m of a mains power pole on the same side of the street hence the above clause **is not** applicable.*

3.3. Landscaping Officer

Inspection was undertaken on Tuesday 29th April 2026 through google street view and near map aerial photography with photos of all vegetation found at D05990807 & D05940688

This assessment is in accordance with Arboriculture Assessment Report and the only vegetation assessed within this report is located wholly within western No.200 rear property, the vegetation comprised of, mature Syagrus romanzoffiana (Coco Palm) 12 metres high, 4 metre canopy, good condition, just north, mature ligustrum sp. (Privet), 6 metres high poor condition, both listed as undesirable species under 2013 DCP B5 control.

While council corresponded with applicant to request that they liaise with western adjoining neighbour to determine whether removal of the two species could be undertaken prior to commencement of building works, however, due to unsuccessful negotiations with the neighbour, removal of trees is not achievable.

Accordingly, both trees are to be retained and protected in accordance with Arboriculture Assessment Recommendations, including Condition 5 (Tree Protection Plan), Condition 7

(Arborists Recommendations) and Condition 8 (Construction Hold Points for Tree protection) together with additional tree protection conditions imposed by assessing landscape officer within this report.

Retaining the Palm will result in portions of the crown extending over the proposed roof structure, with the trunk located in very close proximity to the proposed new building, this arrangement is not considered an ideal outcome, however, appropriate arboriculture protection measures can be implemented successfully prior to and during construction to mitigate potential impacts.

Prior to commencement of works, the Palm fronds may be carefully roped and secured into a tight bundle to prevent damage and encroachment into construction footprint, this method is a standard arboriculture technique routinely used during transplanting or preparation for transplanting, and is considered best practise, and given the close proximity of the palm trunk to proposed building, there is a potential of physical and mechanical damage during construction.

Subject to adjoining owner approval, temporary baton or trunk protection may be installed to safeguard the trunk from impact associated with construction activities, where protection is not feasible, the onsite qualified arborists is to be present on site during relevant construction stages to supervise works and ensure that both the trunk and secured fronds are adequately protected from physical and mechanical injuries for the duration of works.

Prior to any excavation works associated with the removal of existing concrete slab, the suitably qualified arborist is to be present on site to provide direction and supervision regarding slab removal, also footing excavations adjacent these neighbouring trees, so to avoid damage to its roots system.

Minimal landscape has been provided as part of the proposed development, limited to planter areas at the frontage and within rear setbacks at first and second levels, while the Apartment Design Guide (ADG) part 3E - Deep Soils Zones, seeks to ensure the provisions of adequate deep soil areas, it is acknowledged that compliance is constrained by the size of the lot and the scale of proposed development.

The landscape proposal does not adequately address opportunities to increase soil volumes within building footprint to support small trees and additional shrub plantings. Additionally, landscaped areas with increased soil depths should be incorporated where it is possible to enhance deep soil functionality, improve planting viability and contribute to overall site amenity and environmental outcomes.

Appendix 2: ADG Compliance Table

<table>
<tr><th>Clause</th><th>Design Criteria</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td colspan="4">Part 3: Siting the Development</td></tr>
<tr><td>3D-1</td><td colspan="3">Communal and Public Open Space</td></tr>
<tr><td></td><td>Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)</td><td>Nil proposed – acceptable on merit noting that suitably sized private open space is provided for each unit. The site is in close proximity to public spaces, including Alison Park.</td><td>On merit</td></tr>
<tr><td></td><td>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).</td><td>Not applicable.</td><td>On merit</td></tr>
<tr><td>3E-1</td><td colspan="3">Deep Soil</td></tr>
<tr><td></td><td>Deep soil zones are to meet the following requirements:
Site Area:
<table><tr><th>Site Area</th><th>Min. Dimension</th><th>Deep Soil Zone (% site)</th></tr><tr><td>< 650m^2</td><td>-</td><td>7%</td></tr><tr><td>650–1,500m^2</td><td>3m</td><td>7%</td></tr><tr><td>>1,500m^2</td><td>6m</td><td>7%</td></tr></table></td><td>Nil proposed – acceptable on merit noting that the site is zoned E2 Commercial Centre, is largely constrained by existing development, and has minimal opportunity to accommodate deep soil planting.

Accordingly, there is no practical capacity to provide deep soil areas on the site. Refer to Key Issues section for further discussion.</td><td>On merit</td></tr>
<tr><td>3F-1</td><td colspan="3">Visual Privacy</td></tr>
<tr><td></td><td>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><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table></td><td>Northern side = nil – 2.5m.
Eastern side = nil-600mm
Western side = 1.1-1.77m

Note that there are existing nil setbacks to the eastern side and rear boundaries.

Refer to key issues section.</td><td>On merit</td></tr>
</table>

Clause	Design Criteria	Proposal	Compliance
	Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties		
3J-1	**Bicycle and Car Parking**		
	For sites located within 800m of a light rail stop, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.	Proposed = 4 spaces Refer to Development Engineer's comments in the referral section and discussion in the Key Issues section.	On merit
Part 4: Designing the Building			
4A	**Solar and Daylight Access**		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid Winter.	Proposed = 83% All the units achieve the minimum requirements, subject to conditions, except for Unit 4, which is positioned on the first floor and is south and western facing. A condition of consent has been imposed requiring the introduction of highlight windows to the eastern elevation and the provision of skylights to the open-plan living, dining, and kitchen area of Unit 6 to further improve the solar access for the subject development.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Nil apartment receives no direct sunlight.	Yes
4B	**Natural Ventilation**		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	Proposed = 100%	Yes

Clause	Design Criteria	Proposal	Compliance
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Not exceeding 18m.	Yes
4C	**Ceiling Heights**		
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: • Habitable Rooms – 2.7m • Non-habitable – 2.4m • Attic spaces – 1.8m at edge with min 30 degree ceiling slope • Mixed use areas – 3.3m for ground and first floor These minimums do not preclude higher ceilings if desired	Proposed = 2.7m	Yes
4D	**Apartment Size and Layout**		
	Apartments are required to have the following minimum internal areas: • Studio - 35m^2 • 1 bedroom - 50m^2 • 2 bedroom - 70m^2 • 3 bedroom - 90m^2 The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m^2 each A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m^2 each	Unit 3 = 1 bed, 51.75sqm Unit 4 = 1 bed, 62.61sqm Unit 5 = 2 bed, 80.07sqm Unit 6 = 3 bed, 99.63sqm	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Complies.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Complies.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Complies.	Yes
	Master bedrooms have a minimum area of 10m^2 and other bedrooms 9m^2 (excluding wardrobe space)	Complies.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space	Complies.	Yes
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments	Complies.	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies.	Yes
4E	**Private Open Space and Balconies**		

Clause	Design Criteria	Proposal	Compliance
	All apartments are required to have primary balconies as follows: 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 The minimum balcony depth to be counted as contributing to the balcony area is 1m	Complies.	Yes
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m	N/A	N/A
4F	**Common Circulation and Spaces**		
	The maximum number of apartments off a circulation core on a single level is eight	Proposed = 4	Yes
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	N/A	N/A
4G	**Storage**		
	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: • Studio apartments - 4m^3 • 1 bedroom apartments - 6m^3 • 2 bedroom apartments - 8m^3 • 3+ bedroom apartments - 10m^3 At least 50% of the required storage is to be located within the apartment	Complies.	Yes

Appendix 3: DCP Compliance Table

Part B4: Landscaping and Biodiversity

Council is satisfied that the proposed development meets the landscape requirements in accordance with Part B4 of RDCP 2013. Refer to detailed assessment by Council's Landscape Officer in Appendix 1.

Part B6: Recycling and Waste Management

Council is satisfied that the proposed development meets the waste requirements in accordance with Part B6 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer in Appendix 1.

Part B7: Transport, Traffic, Parking and Access

Council is satisfied with the proposed development regarding Part B7 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer in Appendix 1 and discussion of parking deficiency in the Key Issues section.

Part B8: Water Management

Council is satisfied that the proposed development meets the water management requirements in accordance with Part B8 of RDCP 2013. Refer to detailed assessment by Council's Development Engineer in Appendix 1.

Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
2.	**Site Planning**		
2.2	**Landscaped open space and deep soil area**		
2.2.1	**Landscaped open space**		
	A minimum of 50% of the site area is to be landscaped open space.	Proposed = nil Refer to Key Issues section.	Merit assessment
3.	**Building Envelope**		
3.3	**Building depth**		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	The proposal provides a building depth of 20.57m on the first floor and 18.71m on the second floor. Articulation has been provided via building indentations in the middle to break up the building. Refer to Key Issues section.	Merit Assessment
3.4	**Setbacks**		
3.4.1	**Front setback**		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.	GF – nil – existing FF – nil – existing L2 – 3m – consistent with the prevailing setback along the street	Yes
3.4.2	**Side setback**		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	Residential flat building (i) Comply with the minimum side setback requirements stated below: - 14m≤site frontage width<16m: 2.5m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. (iii) A fire protection statement must be submitted where windows are proposed on the external walls of a 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.	Refer to Key Issues section	Merit Assessment
3.4.3	**Rear setback**		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	Refer to Key Issues section	Merit Assessment
4.	**Building Design**		
4.1	**Building façade**		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be	The proposal has been properly designed to address Alison Road and the unnamed laneway. Building indentation has been introduced on both side elevations to articulate the façade, and contribute to the visual character of the street. Condition has also been included in the draft	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	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.	Notice of Determination to include green walls on the eastern elevation to further improve the visual presentation.	
4.2	**Roof design**		
	(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape. (vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain. (vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if: - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the	The proposed roof design is compatible with the surrounding development.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. (viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.		
4.4	**External wall height and ceiling height**		
	(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.	Proposed = 9.9m	Yes
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Proposed = 2.7m	Yes
4.5	**Pedestrian Entry**		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Existing pedestrian entry via the laneway retained. Mailboxes provided next to the entry.	Yes
4.6	**Internal circulation**		
	(i) Enhance the amenity and safety of circulation spaces by: - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.	Existing circulation space retained, windows and skylights provided for the staircase on the second floor.	Yes
	(ii) Use multiple access cores to: - 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.	Proposed = maximum 4	Yes
4.7	**Apartment layout**		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.	Complies	Yes
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Complies	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Complies	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Complies	Yes
4.9	**Colours, materials and finishes**		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry	Council's Heritage Planner has imposed conditions regarding the proposed colours, materials and finishes.	Conditioned

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	- Light colours or finishes where they may cause adverse glare or reflectivity impacts (vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.		
4.12	**Earthworks Excavation and backfilling**		
	(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification. (ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site. (iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.	Minor earthworks proposed for the foundation, which is restricted to the building footprint.	Yes
5.	**Amenity**		
5.1	**Solar access and overshadowing**		
	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.	Noting that for residential flat buildings, ADG requires 2 hours from 9am to 3pm on 21 June and prevails over DCP control. Refer to Key Issues section.	Yes
5.3	**Visual privacy**		
	(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to	Refer to Key Issues section.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection		
5.4	**Acoustic privacy**		
	(i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate "quiet areas" such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors	The proposed development, comprising four (4) additional residential units, is unlikely to result in significant adverse noise. The application was accompanied by an acoustic report, prepared by Koikas Acoustics, which concluded that the proposal will achieve appropriate acoustic privacy, subject to recommendations. A condition has been included in the draft Notice of Determination accordingly.	Yes
5.5	**View sharing**		
	(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be	There are no significant views available from the subject site or neighbouring properties. The proposed development complies with the maximum building height and provides reasonable	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.	building setbacks, which ensures that any impacts are minimal. As such, the proposal is not expected to result in any unreasonable loss of views to neighbouring properties and is considered acceptable.	
5.6	**Safety and security**		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Complies	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Complies	Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Complies	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	Complies	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Complies	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Complies	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Complies	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique	Complies	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	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.	Complies	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Complies	Yes
6.	**Car parking and access**		
6.1	**Location**		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	Existing access from the laneway retained.	Yes
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	Complies	Yes
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	Proposed = nil - existing	Merit Assessment
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	N/A	N/A
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.	Complies	Yes
6.2	**Configuration**		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.	Proposed = Reverse parking, existing situation retained due to site constraints.	Merit Assessment
	(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must	Complies	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	be tapered towards the street boundary as much as possible.		
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.	N/A	N/A
7.	**Fencing and Ancillary Development**		
7.6	**Storage**		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:	Suitable storage is provided for future residents within the apartments.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	(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.	N/A	N/A
	(ii) Provide internal laundry for each dwelling unit.	Each unit is provided with a laundry.	Yes
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.	Each unit is provided with a dryer within the laundry.	Yes
7.8	**Air conditioning units:**		
	• Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. • Air conditioning units must not be installed within window frames.	All AC units are located within balconies, away from the street.	Yes

Section D3: Randwick Junction Centre

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
5.	**Visual Character**		
	i) Views and vistas should be addressed in the site analysis for new development, as they may necessitate adjustments to the built form and site layout, so that view corridors and vistas are not obstructed. .	There are no significant views available from the subject site or neighbouring properties. The proposed development complies with the maximum building height and provides reasonable building setbacks, which ensures that any impacts are minimal. As such, the proposal is not expected to result in any unreasonable loss of views to neighbouring properties and is considered acceptable.	Yes
	ii) Development should fit within the wider townscape indicated by the view corridors and should not disrupt existing visual relationships		
8.	**Site Planning**		
	iii) Development should relate to the dimensions and shape of the site.	Complies	Yes
	iv) Development should integrate with the surrounding area through consideration of streetscape and landscape design and pedestrian and cycle links.	Complies	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	v) Retain and integrate heritage items or contributory buildings and significant features such as stone fencing and retaining walls.	N/A	N/A
	vi) Development must minimise impacts on the amenity of neighbouring sites.	Complies	Yes
9.	**Building Envelope**		
	i) The FSR and building height controls set by RLEP together with DCP envelope controls define the overall built form and scale of development.	Complies	Yes
	ii) New development should be built to the street alignment and to the side boundaries of the allotment.	N/A	N/A
	iii) Where adjoining and nearby development is set back from the street, new development should be consistent with the setbacks of adjoining development or the dominant setbacks along the street.	Complies	Yes
10.	**Building Design**		
10.3	**Upper Floor Facades**		
	i) For new development, façade alterations and infill buildings, verandahs and upper storey balcony design and materials should be compatible to the heritage items and contributing facades within the area.	Complies	Yes
	ii) Cantilevered balconies should not be used on new buildings.	Complies	Yes
	iii) Balconies should be sized and arranged so that strong horizontal lines do not dominate the façade of the development.	Complies	Yes
	iv) Recessed balconies which modulate the façade should be incorporated in the design of new development.	Complies	Yes
	v) Balconies should be designed to protect the visual amenity of occupants, neighbours and the street and should therefore have a solid appearance.	Complies	Yes
10.4	**Materials and colours**		
	i) Materials and finishes for new development should be compatible with adjoining and nearby development. Sympathetic use of building materials can reduce the impact of a modern shopfront on the streetscape.	Council's Heritage Planner has imposed conditions regarding the proposed colours, materials and finishes.	Conditioned
	ii) Acceptable materials include face brickwork (traditional reds, browns and manganese) and rendered masonry. The use of precast concrete is to be avoided. Acceptable roof materials include corrugated iron and Marseilles tiles.		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/ Conditioned)
	iii) Original face brickwork or stone should not be painted or rendered.		
	iv) Colours should enhance the locality and be appropriate to the architectural style of the building.		

Responsible officer: Ivy Zhang, Senior Environmental Planning Officer

File Reference: DA/1267/2025

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Draft Development Consent Conditions (Mixed use)

Folder /DA No:	DA/1267/2025
Property:	202-204 Alison Road, RANDWICK NSW 2031
Proposal:	Alterations and additions to existing shop top housing including provision of 2 x new levels (202 Alison Road) and 1 x new level (204 Alison Road) resulting in 6 x residential units and 4 x car spaces, associated ancillary and landscaping works
Recommendation:	Approval

GENERAL CONDITIONS

Condition

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

Plan	*Drawn by*	*Dated*	*Received by Council*
Site Plan Sheet A5, Issue E	RK Design	14 April 2026	15 April 2026
Demolition Work Plan Sheet A7, Issue E			
Proposed Ground & First Floor Sheet A8, Issue E			
Proposed Second Floor Sheet A9, Issue E			
Proposed Roof Plan Sheet A10, Issue E			
Elevations Sheet A11, Issue E			
Sections Sheet A12, Issue E			
Consolidation Plan Sheet A24, Issue E			

BASIX Certificate No.	*Dated*	*Received by Council*
1820526M	6 November 2025	28 November 2025

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

	Condition

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

2. **Amendment of Plans & Documentation**
The approved plans and documents must be amended in accordance with the following requirements:

a. A privacy screen having a height of minimum 1.6m (measured above Finished Floor Level) shall be provided to Bed 1 and Bed 2 windows of Unit 5 on the second floor.

Privacy screen/s must be constructed with either:
- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
- Fixed lattice/slats with individual openings not more than 30mm wide;
- Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

b. A planter box comprising a minimum width of 600mm by 600mm soil depth shall be installed along the eastern edge of the rear balcony on the second floor.

c. The following planter boxes shall have minimum 600mm soil depth to accommodate suitable screening planting:
- Planter boxes to the west of the living room and balcony of Unit 3 on the first floor;
- Planter boxes along the western edge of the front balcony of Unit 4 on the first floor; and
- Planter boxes along the edge of the rear balcony of Unit 5.

d. Windows with at least 1m in width and a minimum sill height of 1.6m above finished floor level shall be provided to the living / dining area of Unit 5 and Unit 6 on the eastern elevation on the second floor.

e. Skylights shall be installed above the open plan kitchen / living / dining area of Unit 6.

f. The roof element above the staircase, together with the kitchen windows to Unit 5 and Unit 6, shall be lowered so that the overall wall height does not exceed 10.5m.

g. Suitable wall planting shall be provided on the western side of the second floor north elevation to soften the building façade.

h. Suitable painting artwork shall be provided on the ground floor eastern elevation to enhance activation and visual interest along this frontage.

i. Ceiling fans shall be provided to all apartments.

j. North facing Photovoltaic arrays shall be included.

The abovementioned plan amendments must be submitted to and approved by Council's Manager Development Assessment prior to the release of any construction certificate.

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

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Condition

BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
3.	**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.
4.	**External Colours, Materials & Finishes** a) The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building. Details of the new/proposed colours, materials and textures (i.e manufacturer's specifications) are to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. b) New materials for making good and repairs, are to match the existing in terms of colours, finishes, sizes, profile and properties. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.
5.	**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 $2,036,091.65 the following applicable monetary levy must be paid to Council: $20,360.90. 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.

Condition

6. **Long Service Levy Payments**
Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with Section 6.8 of the *Environmental Planning and Assessment Act 1979*.

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

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

7. **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*:

- **$2,000.00** - 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.

8. **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)	$43,248.70
Transport project component	Nil
Total housing and productivity contribution	$43,248.70

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.

	Condition
	The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the HPC Order exempts the development from the contribution. The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025. Condition Reason: To require contributions towards the provision of regional infrastructure, and to ensure the housing and productivity contribution is paid.
9.	**Sydney Water** All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation. The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met. The Tap in™ service provides 24/7 access to a range of services, including: • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service. Condition Reason: To ensure the development satisfies Sydney Water requirements.
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

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	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 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.
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: (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 Reason: To ensure the subject site/development and adjoining land is adequately supported and protected during any works.
14.	**TfNSW** a) All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site, are to be wholly within the freehold property unlimited in height or depth along the Alison Road boundary. b) Any proposed public utility adjustment/relocation works on the state road

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network will require detailed civil design plans for road opening/underboring to be submitted to TfNSW for review and acceptance prior to the commencement of any works. The developer must also obtain any necessary approvals from the various public utility authorities and/or their agents. Please send all documentation to development.sydney@transport.nsw.gov.au . A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued. c) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system on Alison Road are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au . A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued. d) A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Alison Road during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf Condition Reason: To ensure the development satisfies TfNSW requirements.
15. **Heritage** a) A Schedule of Conservation Works for the existing buildings, including external facades and shop fronts shall be prepared in accordance with the principles embodied in the Australia ICOMOS Burra Charter and Heritage NSW guidelines. This Plan shall be prepared by an architect suitably qualified and experienced in heritage conservation, and shall be to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. b) The conservation works and maintenance recommendations/program outlined in the Schedule of Conservation Works shall be implemented and reviewed and approved by Council prior to an occupation certificate being issued for the development. c) A photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage guidelines. A PDF electronic copy of the archival record, incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs, is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own record keeping. d) 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 materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.

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e) Details of any changes to the proposed paint scheme are to be submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. Unpainted surfaces, eg- brickwork/stonework are to remain unpainted, and no applied finishes are to be used.

Condition Reason: To conserve the heritage significance of heritage items and heritage conservation areas.

16. **Acoustic Report Recommendations**
All the recommendations contained within the Acoustic RFI Response – DA/1267/2025, prepared by Koikas Acoustics and dated 29 April 2026 and those in the Acoustical Report prepared by Koikas Acoustics and dated 18 June 2025 must be included in the construction certificate plans and associated documentation.

Condition Reason: To ensure the proposal adopts the acoustic recommendations to achieve appropriate acoustic privacy.

17. **Fire Safety Report Recommendations**
All the recommendations contained within the Fire Engineering Report prepared by i-Fire Engineers and dated 14 April 2026 must be included in the construction certificate plans and associated documentation.

Condition Reason: To ensure the proposal adopts the fire safety recommendations to achieve compliant fire safety outcome.

18. **Carspace/Garage Layout**
Plans submitted for the construction certificate shall demonstrate compliance with the following amendments/requirements to address access issues for waste bins and bicycle parking;

a) The accessible space is to be deleted with the shared zone replaced by a standard carspace.

b) The resulting two carspaces at the rear of the garage are to be located as far as practical to the western and northern walls to improve access to the waste bins and bicycle parking.

c) If structurally feasible the opening between the existing and proposed garages should be widened as far as practical to improve access for vehicles, bicycles and waste bins in the rear garage.

d) Car spot 2 being immediately in front of the proposed shared zone is to be deleted and kept clear to provide access to the carspace required by a) above and also provide suitable access to waste bins and bicycle parking.

Condition Reason: To provide improved and suitable access to proposed bicycle parking and waste storage area.

19. **Stormwater Drainage**
Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.

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

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a. To the kerb and gutter along the site frontage by gravity without the use of a charged system); OR

b. Through a private drainage easement(s) as required to Council's pit located within the adjacent Right of Way;

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 required 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 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 Stormwater Code.

All pump out water must pass through a stilling pit, located within the site, prior to being discharged by gravity to the kerb and gutter.

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

20. **Waste Management**
The submitted operational waste management plan has not been approved as part of this consent. An amended 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 Development Engineer prior to the issuing of any construction certificate.

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):

- 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.

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

Condition Reason: To ensure the development effectively manages its waste during construction and operational phases.

21. **Waste Management**
The residential bin room/area shall be sized to contain a total of 7 x 240 litre bins (comprising 3 garbage bins, 3 recycle bins and 1 x FOGO) and with adequate provisions for access to all bins and with a unobstructed pathway for presentation of bins for collection by Council. Details showing compliance are to be included in the construction certificate plans and amended Waste Management plan.

The commercial/retail garbage area shall be suitably sized to accommodate the

	Condition

expected use and collection frequencies with adequate access to all bins and with an unobstructed pathway for presentation of bins for collection by Council or private contractor. Details showing compliance are to be included in the construction certificate plans and amended Waste Management plan.

The commercial garbage area/s must be physically separated from the residential bin storage area. Details showing compliance are to be included in the construction certificate plans and amended Waste Management plan.

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

22. **Landscape Plan**
Minimal landscape has been provided as part of the proposed development, the Landscape Plans by Apex Studios Issue B dated 21/10/2025 must be amended to now include the following requirements:

a) Planter boxes have been designed with soil depths of approximately 400mm, which is sufficient for small, low maintenance plant species, as identified in the Plant Schedule, these depths may be maintained in planter areas where balcony privacy screening is not required. In locations where additional privacy is necessary, increased soil depths are required to accommodate large plant species, in these areas, a minimum depth of 600mm must be provided to support appropriate vegetation capable of achieving the required screening, which can be, as follows;

I. *Syzygium spp*. (Lilly Pilly), Evergreen, mature height of 3-4 metres, dense foliage, low maintenance and easily pruned.
II. Clumping non evasive Bamboo, Evergreen, mature height of 3-4 metres, dense foliage, low maintenance and easily pruned.
III. *Camellia sasanqua* (Camellia sasanqua), Evergreen, mature height of around 1-2 metres and easily pruned.
IV. *Rhaphiolepis indica* (Indian Hawthorn) Compact and hardy, mature height of around 1-2 metres

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.

23. **Protection of trees within western neighbouring property**

To ensure retention of mature *Syagrus romanzoffiana* (Coco Palm) 12 metres high, 4 metre canopy, good condition, just north, mature *ligustrum sp.* (Privet), 6 metres high poor condition, both listed as undesirable species under 2013 DCP B5 control, the following measures are to be undertaken:

a) All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks, canopies SRZ, TPZ and Tree Identification Numbers as taken from the Arborist Report, Arbor Express dated 16/11/2025, to be clearly and accurately shown on all plans in relation to the proposed works.

b) Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as *'the Project Arborist'* for the duration of works

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Condition
and will be responsible for both implementing and monitoring these conditions of development consent, the Tree Protection/Management Plan/Recommendations/Specification any other instructions issued on-site.
c) Where there is a difference in level between this site and an adjoining property, and the soil level where the trees are growing is higher than the subject site, if the soil profile is to be exposed for any period of time, temporary shoring must be provided along the common boundary so as to prevent failure of the soil and trees, with a suitable system to be approved by the PCA, prior to installation.
d) Both trees must be physically protected with existing colorbond fence, if removal of fence has been applied, installation of 1.8-metre-high steel mesh/chainwire fencing panels, which shall be secured to the boundary fence to its south and to its north, to completely enclose the trees for the duration of works.
e) Existing fencing may be retained, or construction fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".**
f) With neighbouring approval, the Palm fronds may be carefully roped and secured into a tight bundle to prevent damage and encroachment into construction footprint, this method is a standard arboriculture technique routinely used during transplanting or preparation for transplanting and is considered best practise.
g) Given the close proximity of the Palm trunk to proposed building, there is a potential of physical and mechanical damage during construction, trunk protection is required if approval is granted by neighbour for this protection, this can be provided by wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall then be placed around their circumference and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
h) If approval is not granted by the neighbouring tree owner for items f) & g) above, both trees are to be retained and protected in accordance with Arboriculture Assessment Recommendations, Condition 5 (Tree Protection Plan), Condition 7 (Arborists Recommendations) and Condition 8 (Construction Hold Points for Tree protection)
i) Prior to any excavation works associated with the removal of existing concrete slab, adjacent these trees, the suitably qualified arborist is to be present on site to provide direction and supervision regarding slab removal, and footing excavations, so to avoid damage to its roots system.
j) Where major roots with a diameter of 50mm or more are encountered and Site Arborist determines they must be retained, a cantilevered, pier and beam style footing must be used for these areas.
k) The Construction Certificate plans must acknowledge that arboriculture assessing arborist inspection may result in the need to

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	Condition
	alter the design away from a traditional strip footing, with a suitably qualified engineer to have an alternative design approved by the Principal Certifier, prior to installing the footings.
	l) Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then being backfilled with clean site soil as soon as practically possible.
	m) Where roots are encountered which are in direct conflict with the approved works, they may be cut cleanly using only hand-held tools, not machinery, with the affected area to then be backfilled with clean site soil as soon as practically possible.
	n) Ground levels within the TPZ/'s must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil.
	o) Within the TPZ/'s there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
	p) The Principal Certifier/and Project Arborist must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.
	Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

BEFORE BUILDING WORK COMMENCES

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

Condition

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.

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

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

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

26. **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.

27. **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

Condition

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.

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

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

29. **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

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	Condition
	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.
30.	**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.
31.	**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: • A description of the demolition, excavation and construction works • A site plan/s showing the site, roads, footpaths, site access points and vehicular movements • Any proposed road and/or footpath closures • Proposed site access locations for personnel, deliveries and materials • Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site) • Provision for loading and unloading of goods and materials • Impacts of the work and vehicular movements on the road network, traffic and pedestrians • Proposed hours of construction related activities and vehicular movements to and from the site • Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority) • Any activities proposed to be located or impact upon Council's road, footways or any public place • Measures to maintain public safety and convenience *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.
32.	**External Authorities** Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport for NSW, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

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	Condition
	All conditions and requirements of the NSW Police, Transport for NSW 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.
33.	**Public Utilities** A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service. 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
34.	**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.
35.	**Restriction on Working Hours** Building, demolition and associated site works must be carried out in accordance with the following requirements: Activity: All building, demolition and site work, including site deliveries (except as detailed below) Permitted working hours: • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted

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Condition	
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.

36. **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.

37. **Construction Site Management**
Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:

(a) Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.

(b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.

(c) All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

(d) Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.

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

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

Condition

Notes:

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

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

38. **Overhead Hoardings**
An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:

- 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.

Condition Reason: To ensure proper management of public land and ensure public safety during site works and construction.

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

a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.

b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.

c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.

d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.

e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

f) 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

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	Condition
	and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible. Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time. *If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.* h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council. j) Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details. Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
40.	**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.
41.	**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

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

42. **Excavations and Support of Adjoining Land**
Tin 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.

43. **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 reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.

44. **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.

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

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

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

Condition Reason: To ensure compliance with approved plans.

46. **Tree & Vegetation Management**
There was a total absence of vegetation within this property, the only species to be assessed are wholly within western neighboring property, which protection methods have been applied.

Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.

47. **Road / Asset Opening Permit**

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	A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with. The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development. For further information, and access to the Asset Opening Permit application form please visit Councils website at https://www.randwick.nsw.gov.au/services/roads/road-and-footpath-excavations or ring the call centre on 1300 722 542 Condition Reason: To ensure protection and/or repair of Council's Road & footpath assets and ensure public safety.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
48.	**Occupation Certificate Requirements** An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. Condition reason: Statutory requirement. To ensure the site is authorised for occupation.
49.	**BASIX Requirements** In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled. Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the Council upon issuing an Occupation Certificate. Condition Reason: Statutory requirement. To ensure that the BASIX requirements have been fulfilled.
50.	**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: (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

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	Condition
	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.
51.	**Fire Safety Certificate** A single and complete *Fire Safety Certificate*, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy of the *Fire Safety Certificate* and *Fire Safety Schedule* must also be forwarded to Fire and Rescue NSW. Condition Reason: Statutory requirement. To ensure compliance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, and that adequate provision is made for fire safety in the premises for building occupant safety.
52.	**Structural Certification** A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council. Condition Reason: To ensure the structural adequacy of the building and works.
53.	**Sydney Water Certification** A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site *www.sydneywater.com.au* > *Building and developing* > *Developing your Land* > *Water Servicing Coordinator* or telephone 13 20 92. Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design. The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner. Condition Reason: To ensure the development satisfies Sydney Water requirements.
54.	**Noise Control Requirements & Certification** The use and operation of the development (including all plant and equipment) shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and *Regulations.* Condition Reason: To protect the amenity of the surrounding area and residents.
55.	**Noise Control Requirements & Certification** A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from the

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	Condition
	development (and plant and equipment) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent. A copy of the report must be provided to the *Principal Certifier* and Council prior to an occupation certificate being issued. Condition Reason: To protect the amenity of the surrounding area and residents.
56.	**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. *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 properties are identifiable and that numbering is in accordance with the relevant standards and guidelines.
57.	**Landscaping Certification** 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 Apex Studios Issue B dated 21/10/2025. Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of development. Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.
58.	**Council's Infrastructure, Vehicular Crossings, street verge** The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway. 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 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.

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	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.
59.	**Stormwater Drainage** The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier. Condition Reason: To control and manage stormwater run-off so as not to adversely impact neighbouring properties and Council's stormwater assets.
60.	**Car Parking** The provided car-spaces shall be allocated as per the following minimum requirements • One car space shall be allocated to the commercial component • The tandem spaces shall be allocated to the 3-bedroom unit. The proposed car spaces shall be labelled and finished in a manner fit for their intended use. The car spaces shall be formalised with line-marking and allocated as per the conditions of this consent. Such works shall be completed prior to occupation of the development. Condition Reason: To comply with the requirements for off street carparking.

OCCUPATION AND ONGOING USE

	Condition
61.	**Use of parking spaces** 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. 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.
62.	**Fire Safety Statement** A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* at least on an annual basis each year following the issue of the *Fire Safety Certificate*, and in accordance with the *Fire Safety Schedule* for the building.

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The *Fire Safety Statement* 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 *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* 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 *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, and that adequate provision is made for fire safety in the premises for building occupant safety.

63. **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.

64. **Residential Parking Permits**
All prospective owners and tenants of the building must be notified that Council will not issue any new residential parking permits to occupants/tenants of this development.

Condition Reason: To protect the amenity of the surrounding area and residents.

65. **Use of new shop at 202 Alison Road**
No consent has been granted for the use of the new shop premises at 202 Alison Road. A separate development consent must be obtained prior to the use of the premises.
Condition Reason: To ensure compliance with the relevant provisions of the EP&A Act and Reg.

DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES

Condition

66. **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):

- 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

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	Condition
	asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish. The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request. If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work. *Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.* *A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.* Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

	Condition
67.	**Demolition Work and Removal of Asbestos Materials** Demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a *demolition work plan*, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council. Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements: • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works, • Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request. *A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.* Condition reason: To ensure that the handling and removal of asbestos from the

Condition
site is appropriately managed.

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