BUSINESS PAPER

Randwick Local Planning Panel (Electronic) Meeting

Thursday 11 June 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, 11 June 2026 at

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Meryl Bishop
DIRECTOR CITY PLANNING

Development Application Report No. D39/26

Subject: 28 Gregory Street, South Coogee (DA/175/2026)

Executive Summary

Proposal:	Alterations and additions to an approved development for the demolition of existing structures and construction of a new two storey attached dual occupancy with basement garage.
Ward:	East Ward
Applicant:	Dirk Anderson
Owner:	Antaeusconst Pty Ltd
Cost of works:	$ 47,362
Reason for referral:	The application includes a Clause 4.6 Objection to the maximum floor space ratio development standard

Recommendation

A. That the RLPP is satisfied that the Applicant's written requests to vary the development standard relating to floor space ratio in Clauses 4.4 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

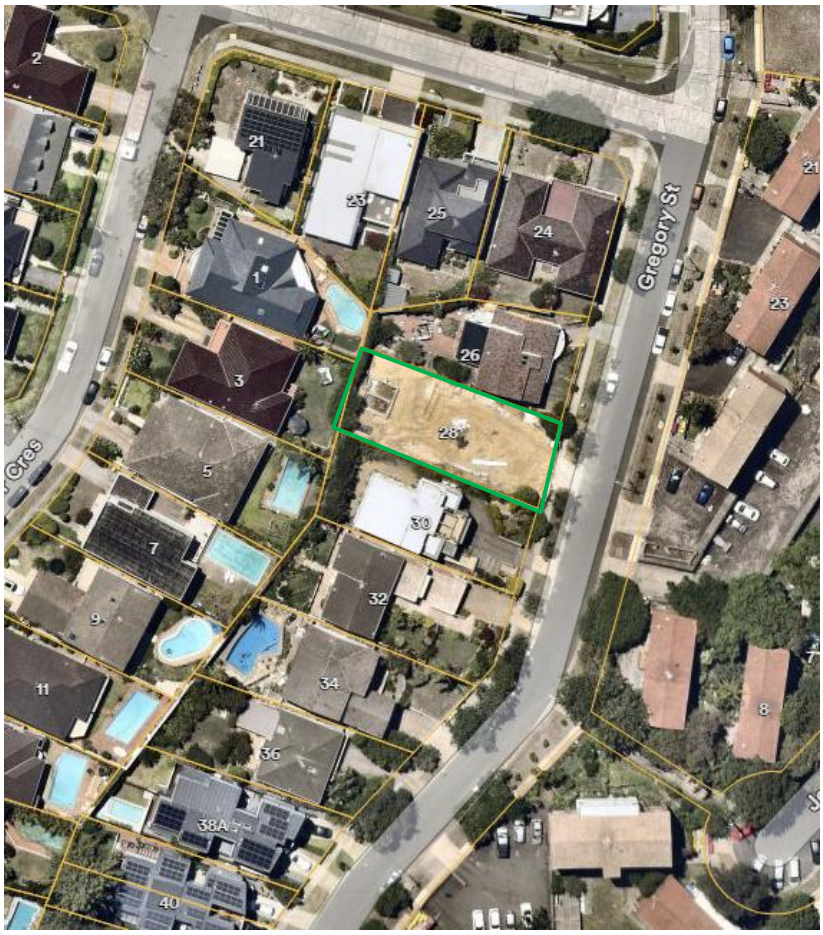
   ii. There are sufficient environmental planning grounds to justify the contravention of the relevant development standard.

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. 175/2026 for alterations and additions to the approved attached dual occupancy at 28 Gregory Street South Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1. RLPP Dev Consent Conditions - DA/175/2026 - 28 Gregory Street, South Coogee

D39/26



Subject Site

Submissions received

North

Locality Plan

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 (FSR) by more than 10%

The proposal seeks development consent for alterations and additions to an approved attached dual occupancy.

The key issues associated with the proposal relate to the variation to the FSR development standard under Clause 4.4 of the Randwick Local Environmental Plan (RLEP) 2012.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is located on the western side of Gregory Street and comprises a rectangular allotment with a frontage of 15.24m, a depth of 36.75m and a total area of 557sqm. The landform slopes steeply from the rear boundary down toward the street, resulting in an overall level difference of approximately seven metres.

The site is situated within an established residential area zoned R2 Low Density Residential. The surrounding locality contains a varied mix of single-storey and two-storey dwellings, along with several attached dual occupancies, reflecting a diverse but low-density suburban character. The

architectural styles, ages and scales of buildings in the area are mixed, contributing to a visually varied streetscape.

The site itself is currently vacant, with demolition and site preparation works underway following the issue of a CDC approval for a dual occupancy development.

3. Relevant history

CDC/392/2025 grants approval for the demolition of existing structures and the construction of two-storey attached dual occupancies, each with an associated swimming pool. Works authorised under the CDC are currently underway, with the basement level having been excavated and formed in accordance with the approved plans.

Proposal

The application seeks approval for alterations and additions to the attached dual occupancy development previously approved under a Complying Development Certificate (CDC). The proposed works involve converting an existing storage area within the garage to provide an additional parking space and enlarging the basement level to accommodate a new storage area at the rear. To facilitate access to the expanded garage layout, the proposal also includes widening the garage door opening and modifying the driveway accordingly.

The remainder of the approved development including the ground and first floor layouts and the swimming pools remains unchanged from the CDC approval. The proposed alterations are therefore limited in scope, primarily internal to the basement and garage areas, and do not alter the overall building envelope, external appearance, or the approved use of the site as an attached dual occupancy.

Figure 1 illustrates the approved basement under CDC and Figures 2 to 5 illustrate the proposed development including the proposed basement enlargement.

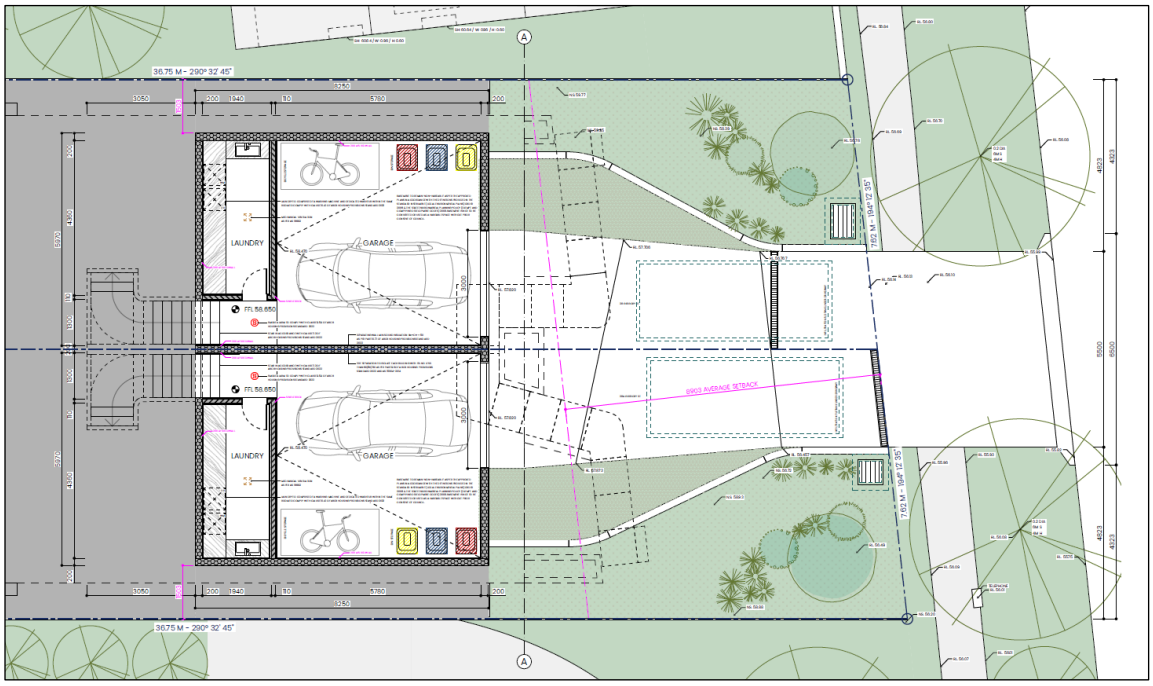


Figure 1: Basement approved under CDC/392/2025

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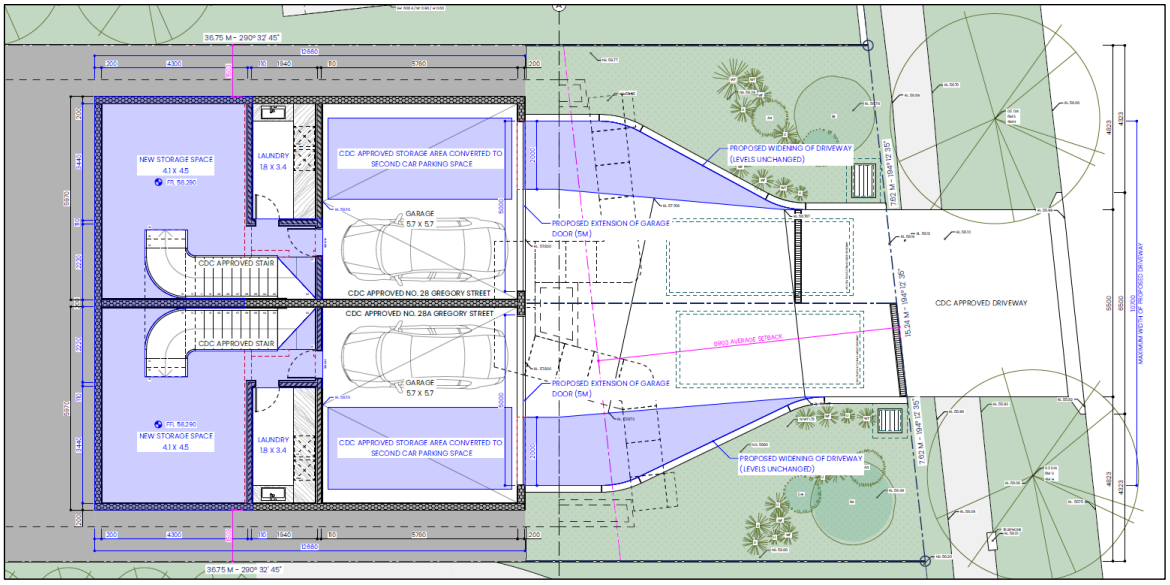


Figure 3: Proposed Basement Enlargement

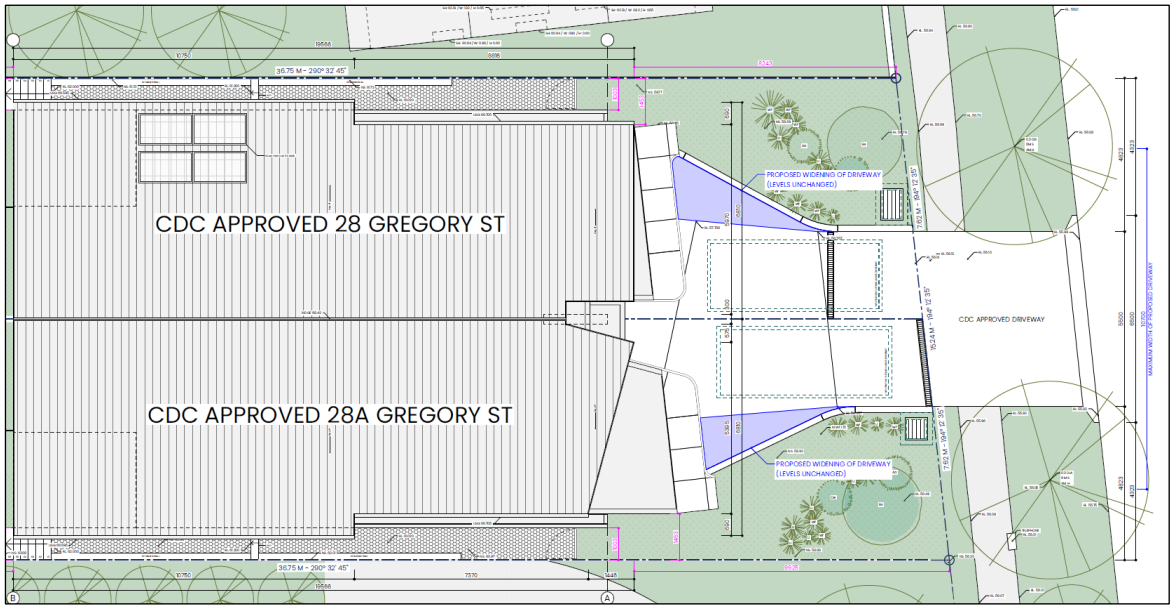


Figure 4: Proposed Enlarged Driveway

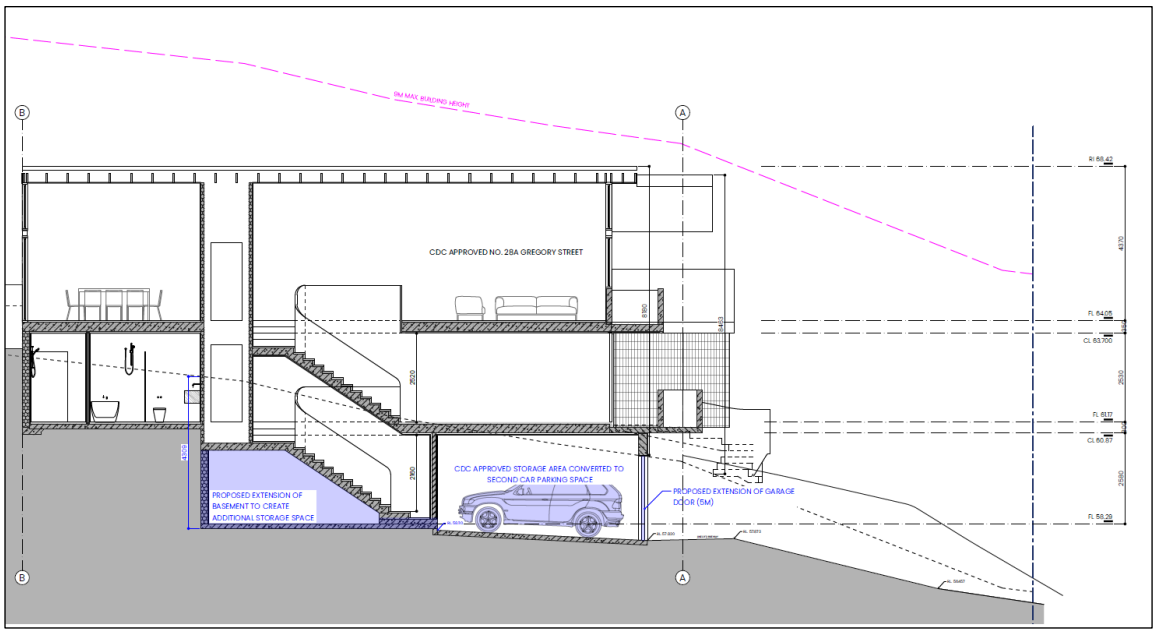


Figure 5: Proposed Section

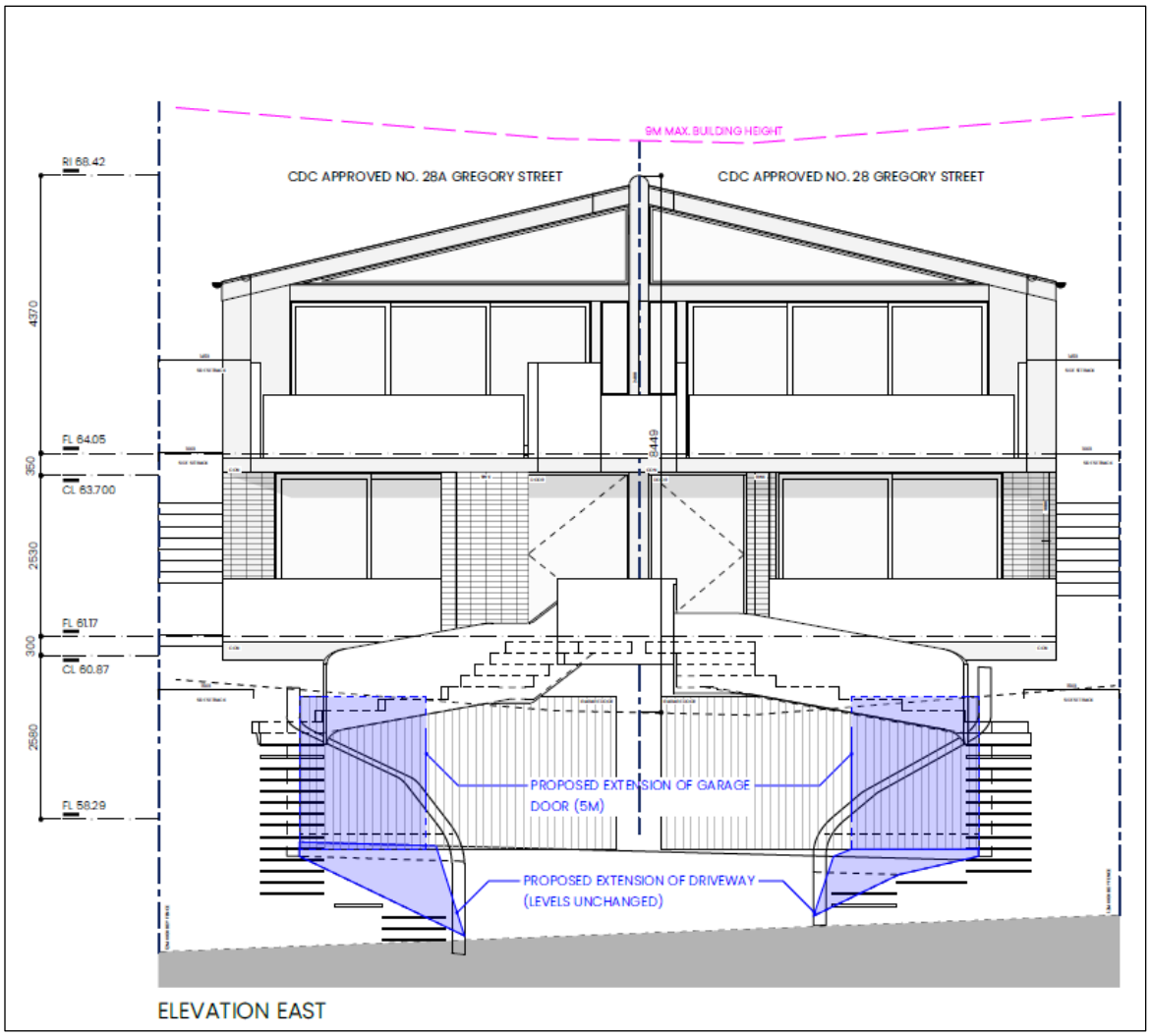


Figure 6: Proposed Eastern (Front) Elevation

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. No submissions were received as a result of the notification process.

5. Relevant Environment Planning Instruments

5.1. SEPP (Sustainable Buildings) 2022

A BASIX Certificate, No. 1780251M_03 has been issued for the proposed development.

5.2. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned R2 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 continue to provide for the housing needs of the community within the R2 zone and protect the amenity of the 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)	0.65:1	0.72:1	No, se Clause 4.6 Objection.
Cl 4.3: Building height (max)	9.5m	8.5m, as approved under CDC no change.	Yes

5.2.1. Clause 4.6 - Exceptions to development standards

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

6. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.65:1	0.72:1	37.31m^2	10.31%

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.

6.1. 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 Applicant's written justification demonstrates that this objective is satisfied by noting that the dual occupancy form is consistent with recent developments along Gregory Street and reflects the transitioning urban character of the R2 zone and remains visually consistent with the intended built form outcome for this setting.

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

   The Applicant's written justification demonstrates that this objective is satisfied by noting that despite the numerical exceedance the building is well modulated and articulated with stepped facades, balcony recesses and material variation and environmental performance is supported through compliance with the BASIX targets. The design meets the intent of this clause by integrating architectural quality and environmental responsiveness.

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

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

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

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

   The Applicant's written justification demonstrates that this objective is satisfied by noting that the minor exceedance in FSR has no discernible adverse impact on adjoining amenity.

The development complies with key built form controls including height, landscaping and deep soil area.

The proposed variation and additional floor area does not generate any unreasonable environmental or amenity impacts and remains compatible with the emerging built form character. The variation supports the intent of the control and is considered acceptable in planning terms.

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

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

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

- The proposal promotes the social and economic welfare of the community and a better environment with a residential planning use that is compatible with surrounding development and existing infrastructure,
- The development supported the supply, delivery and maintenance of housing, including the ongoing use of serviced land for residential purposes within the R2 Low Density Residential Zone.
- The proposal represents an orderly and economic use and development of land, consistent with the planning controls,
- Environmental values are protected through the avoidance of unacceptable impacts on the nature environment,
- The proposal promotes resilience to climate change though compliant design and construction outcomes.
- The site is not a heritage item, is not located within a heritage conservation area and not within the proximity of an identified item,
- The proposal promotes good design and amenity by responding to the existing and desired future character of the area,
- The development utilizes high quality building materials and finishes and will be designed to meet relevant NCC/BCA requirements,
- The overall assessment incorporates an appropriate approach to the nature and scale of the development, and
- The application provides opportunities for community participation through notification of the proposal.

Assessing officer's comment: Following a review of the matters raised in the Applicant's Clause 4.6 written request, the assessment finds that the justifications provided are sound and generally supported. The proposal demonstrates that the objectives of both the development standard and the R2 zone are achieved despite the numerical non-compliance, and that strict adherence to the FSR control would be unreasonable in the context of the site's characteristics and the planning merits of the development. In conclusion, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The variation is considered appropriate in the circumstances and is supported on its planning merits.

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.

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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)(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)(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	No submissions have been received as a result of the notification process.
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

The fundamental matter for consideration is the Applicant's Clause 4.6 written request seeking a variation to the maximum Floor Space Ratio (FSR) development standard under Clause 4.4 of the Randwick Local Environmental Plan (RLEP). The proposal results in an exceedance of the 0.65:1 FSR control, and therefore requires a robust justification demonstrating that strict compliance is unreasonable or unnecessary in the circumstances. Having reviewed the request, it is evident that the Applicant has adequately addressed the underlying objectives of the FSR standard, including

the need to ensure development is compatible with the desired future character of the locality, maintains appropriate bulk and scale, and achieves an orderly and economic use of residentially zoned land. The request also demonstrates that the proposal continues to support housing supply within the R2 Low Density Residential zone, utilises existing infrastructure efficiently, and avoids unacceptable environmental or amenity impacts. In conclusion, the Applicant's written request has satisfactorily demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, and the variation is therefore supported on its planning merits.

9. Conclusion

That the application to carryout alterations and additions to the approved dual occupancy development be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives of the RLEP 2012 and the RDCP 2013, as it supports housing diversity, enhances the functionality of the approved dual occupancy, and provides additional recreational and amenity-improving spaces without adversely affecting the amenity of neighbouring properties.

- The proposed development achieves a balanced and proportionate built form that is neither excessive nor intrusive and remains compatible with the prevailing and desired future streetscape character. The proposal integrates appropriately with the established development pattern of the immediate locality.

- The proposal satisfies the objectives of the R2 Low Density Residential zone, ensuring the continued residential use of the site while maintaining a scale and form that does not result in unreasonable amenity impacts on adjoining or surrounding properties including those relating to visual bulk, privacy, solar access, and view loss.

- The proposed alterations and additions contribute to improved residential amenity, offering enhanced internal layouts, better functionality, and increased usability of the residence, for future occupants.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

Advice from Council's Development Engineer is that are no objections and no conditions applicable for inclusion with any development consent.

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

Site: **28 Gregory Street, South Coogee**

Proposal: **Alterations and additions to an approved development for Demolition of existing structures and construction of two storey dual occupancy with basement garage**

RE: **Variation to Clause 4.4 Floor space ratio (4.4A Exceptions to floor space ratio—Zones R2 and R3) of Randwick Local Environmental Plan 2012**

The Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) and other environmental planning instruments set out development standards that must be met before a consent authority, such as a local council, can grant development consent to a development application (DA). Clause 4.6 of the Standard Instrument LEP allows consent authorities to grant consent to development that contravenes one or more development standards.

Clause 4.6 provides flexibility in the application of development standards. However, confusion around the application of clause 4.6 has contributed to delays, cost burdens and litigation for applicants and councils.

In response, the Department of Planning & Environment have amended clause 4.6 – and similar provisions in non-standard local environmental plans (LEPs) and state environmental planning policies (SEPPs) – to simplify requirements and to make the clause easier to interpret.

They have also made changes to reporting requirements for councils and the approach that the Department of Planning and Environment will take to monitoring and auditing variations decisions. This is to ensure there is there is appropriate probity, accountability and

transparency to maintain confidence in the planning system.

This letter supports a written request to vary the development standard prescribed in Randwick Local Environmental Plan 2012 applying to the proposed Alterations and additions to an approved development for Demolition of existing structures and construction of two storey dual occupancy with basement garage at 28 Gregory Street, South Coogee.

This submission should be read in conjunction with the Statement of Environmental Effects, architectural plans and other consultant's reports.

4.6 Exceptions to Development Standards

> *(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.*

This request is for the contravention of clause 4.4 Floor space ratio (4.4A Exceptions to floor space ratio—Zones R2 and R3) imposed by Randwick Local Environmental Plan 2012. Clause 4.4 Floor space ratio (4.4A Exceptions to floor space ratio—Zones R2 and R3) is not 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.*

This report serves as a written request from the applicant. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is as outlined in this report. This report also outlines the environmental planning grounds to justify contravening the development standard.

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

The matters in Subclause 3 have been addressed in this report. This report also outlines compliance with 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.

(5) (Repealed)

Noted.

(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.

Not proposed.

(7) (Repealed)

Noted.

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—
(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(caa) clause 5.5,
(ca) clause 6.16(3)(b).

Not proposed.

This variation request has been prepared based on the requirements of the "Guide to Varying Development Standards" prepared by the NSW Department of Planning & Environment, November 2023.

For further information, please refer to:
https://www.planning.nsw.gov.au/policy-and-legislation/under-review-and-new-policy-and-legislation/variations-review

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Site and proposed development

1. **Describe the site.**

The site is located on the western side of Gregory Street between the extents of Macleay Street (north), Gregory Street (east), Storey Street (south) and Fowler Crescent (west).

Neighbourhood Scale & Streetscape

Gregory Street and the immediate surrounds are typified by a mix of single and double-storey dwellings with consistent front setbacks and varied architectural styles. The streetscape is orderly yet visually diverse, featuring a combination of face brick, rendered, and weatherboard façades. Fencing is typically low or transparent, maintaining open visual connections between the public and private realms. Off-street parking is commonly accommodated via driveways and integrated garages, with landscaped verges and intermittent street tree planting contributing to a green, walkable environment. The area's gently sloping topography and ocean proximity offer both visual interest and exposure, enhancing the street's distinctive coastal residential character.

Site Scale

Lot: 21 Sec: 26 DP: 758912 (28 Gregory Street, South Coogee) is a fairly regular shaped allotment with a total area of 556.6m² and a 15.24m frontage to Gregory Street. The site has a cross fall from right to left of the site of 5.53m (RL 63.73 – RL 58.20). The proposed site currently contains a single dwelling approved to be demolished and replaced by an approved dual occupancy.

The front of the site includes overhead power lines that run the length of Gregory Street. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any environmental constraints.

2. **Describe the proposed development.**

The development proposes Alterations and additions to an approved development for Demolition of existing structures and construction of two storey dual occupancy with basement garage consisting of:

- Retention of the floor layout of the ground and first floor levels
- Retention of the pool
- Retention of the Basement Garage, Laundry & Stairs

- CDC Approved Storage area converted to second car parking space
- Proposed extension of Basement to create additional storage space
- Proposed extension of Garage door to 5m
- Proposed widening and extension of Driveway

3. What is the environmental planning instrument/s you are seeking to vary?

The name of the environmental planning instrument that applies to the development is Randwick Local Environmental Plan 2012.

4. What is the site's zoning?

The zoning of the land is R2 Low Density Residential.

5. Identify the development standard to be varied.

The development standard being varied is:

Randwick Local Environmental Plan 2012:

4.4 Floor space ratio (4.4A Exceptions to floor space ratio—Zones R2 and R3)

4.4 Floor space ratio

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The maximum FSR permitted for the site is 0.5:1 (278.3sqm).

4.4A Exceptions to floor space ratio—Zones R2 and R3

(2) The maximum floor space ratio for a building used for the purposes specified in the table to this subclause is the ratio determined in accordance with the table.

Land use	*Zone*	*Lot size*	*Maximum floor space ratio*
Dual occupancies (attached)	***Zone R2***	***≥550m2 and <600m2***	***0.65:1***
		≥600m2	*0.6:1*
Dwelling houses, semi-detached dwellings	*Zone R2*	*≥275m2 and ≤300m2*	*0.65:1*
		>300m2	*0.6:1*
	Zone R3	*>300m2 and ≤450m2*	*0.75:1*
		>450m2 and ≤600m2	*0.65:1*
		>600m2	*0.6:1*

The maximum FSR permitted for the site is 0.65:1 (361.79sqm). The development proposes a maximum FSR of 0.72:1 (399.1sqm).

6. **Identify the type of development standard.**

Numerical development standards use numbers to specify requirements (often minimum or maximum requirements) for measuring components of a site and/or development. Examples are minimum lot size requirements or building height limits.

Non-numerical development standards generally contain criteria or matters that need to be satisfied. These standards are typically found in the local provisions of a LEP and vary between LEPs.

The standard is a numeric standard.

7. **What is the numeric value of the development standard in the environmental planning instrument?**

The maximum FSR permitted for the site is 0.65:1 (361.79sqm). The development proposes a maximum FSR of 0.72:1 (399.1sqm) which is more than the maximum permitted by Randwick Local Environmental Plan 2012 and hence the reason for this variation.

8. **What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?**

The proposal is more than maximum Floor Space Ratio development standard by 37.31sqm, which is a percentage variation of 10.31%.

9. **Visual representation of the proposed variation (if relevant).**

Refer to architectural plans prepared by /NDRSN for a visual representation of the proposed development and associated variation.

Justification for the proposed variation

10. **How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

With respect to clause 4.6(3)(a), the common ways to establish whether compliance with the development standard is unreasonable or unnecessary is known as the '5-part test' or the '*Wehbe* test' (from the case of *Wehbe v Pittwater Council [2007] NSWLEC 827*).

The test can be 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.*

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary because pursuant to the ways outlined in Wehbe, the objectives of the development standard achieved notwithstanding the non-compliance.

The development is for Alterations and additions to an approved development for Demolition of existing structures and construction of two storey dual occupancy with basement garage.

Gregory Street and the immediate surrounds are typified by a mix of single and double-storey dwellings with consistent front setbacks and varied architectural styles. The streetscape is orderly yet visually diverse, featuring a combination of face brick, rendered, and weatherboard façades. Fencing is typically low or transparent, maintaining open visual connections between the public and private realms. Off-street parking is commonly accommodated via driveways and integrated garages, with landscaped verges and intermittent street tree planting contributing to a green, walkable environment. The area's gently sloping topography and ocean proximity offer both visual interest and exposure, enhancing the street's distinctive coastal residential character.

Lot: 21 Sec: 26 DP: 758912 (28 Gregory Street, South Coogee) is a fairly regular shaped allotment with a total area of 556.6m² and a 15.24m frontage to Gregory Street. The site has a cross fall from right to left of the site of 5.53m (RL 63.73 – RL 58.20). The proposed site currently contains a single dwelling approved to be demolished and replaced by an approved dual occupancy.

The front of the site includes overhead power lines that run the length of Gregory Street. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood

affected. The site is not identified as having any environmental constraints.

The development will incorporate traditional configuration of "cottages" and "cottage gardens" that define the character of South Coogee's established neighbourhoods. That is, the development proposes dwellings that face the street with landscaped deep soil areas to the front and rear of the site and peripheries. The landscape design maintains screening to the peripheries and landscaping throughout the development, including large trees.

Randwick Local Environmental Plan 2012:

4.4 Floor space ratio (4.4A Exceptions to floor space ratio—Zones R2 and R3)

(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 dual occupancy form is consistent with recent developments along Gregory Street and reflects the transitioning urban character of the R2 zone, each with articulated façades and recessive upper levels, avoiding an over-scaled or dominant appearance. The bulk remains visually consistent with the intended built form outcome for this setting.

The NSW Land and Environment Court in Project Venture Developments v Pittwater Council [2005] NSWLEC 191, considered Scale and density in the context of the surrounding area and formed the following planning principle: Compatibility in the urban environment. The first question that was asked was:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites

The principle follows that in relation to the physical impacts (i.e. amenity), consideration is given to noise, overlooking, overshadowing and constraining development potential which can be assessed with relative objectivity (as was applied in this principle).

In relation to noise:
SEPP (Transport and Infrastructure) 2021 and the Development Control Plan consider acoustics in relation to the site's location and properties of the development itself. The development is located not located along a classified road or rail corridor that require noise mitigation measures. The development is able to comply with the requirements of the NCC for sound transmission through building materials, under the guidance of an acoustic consultant.

In relation to overlooking:
The development has been designed in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 that ensure the privacy of adjoining development is maintained. Windows have been offset where possible or appropriate design treatments to ensure there will be no loss of amenity to potential adjoining property owners.

In relation to overshadowing:
The site is located along the east-west axis. Shadows will be cast from the upper levels of the development as follows:

9am – The development will result in an increase in shadowing to the rear and side of the subject site and the southern adjoining development at 30 Gregory Street.

12pm – The development will result in an increase in shadowing to the side of the subject site and the southern adjoining development at 30 Gregory Street.

3pm – The development will result in an increase in shadowing to the front and side of the subject site and the southern adjoining development at 30 Gregory Street.

The development maintains a minimum of 2 hours direct sunlight in habitable living areas (family rooms, rumpus, lounge and kitchen areas) and in at least 50% of the primary private open space between 9am and 3pm in mid-winter as required by the Development Control Plan and is considered acceptable according to the principles of *Parsonage v Ku-ring-gai [2004] NSWLEC 347*; revised by *The Benevolent Society V Waverley Council (2010) NSWLEC 1082* concerning access to sun light.

Accordingly, these measures will ensure the privacy and amenity of future occupants is protected, along with that of the adjoining property owners surrounding the site.

The second question that was asked was:

- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. In special areas, such as conservation areas, architectural style and materials are also contributors to character. As this site is not located within a conservation area the test is applied to building height, setbacks and landscaping.

In relation to height:
The principle provides that Buildings do not have to be the same height to be compatible. In this regard, the development appears as two storey dwellings from the streetscape. Consent CDC/2025/211 approved a maximum height of building of less than 8.5m. The maximum building height permitted for this site is 9.5m. The development does not change the height of building on the site and maintains a maximum height of less than 8.5m.

In relation to setbacks:
The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. It is our view that the front and side setbacks are generally compatible with the locality. The setbacks sought by the development are maintained as appropriate in this instance and will not disrupt any established building line within the immediate locality and is consistent with other developments in the locality.

In relation to landscaping:
Landscaping is also an important contributor to urban character and landscaping will be provided throughout the site as required.

In the most common sense, the Commissioner provides that most people "experience the urban environment without applying the kind of analysis described above" and simply moving around a city is enough for a person to respond to their surroundings and that if simply taking a walk in this neighbourhood there is little chance that this development would be seen "out of context" and therefore within a compatible character and streetscape in the context of the surrounding area.

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

Despite the numerical exceedance, the dwellings are well-modulated and articulated with stepped facades, balcony recesses, and material variation. Environmental performance is supported through compliance with BASIX targets and passive design strategies including window orientation and internal layouts maximising solar gain and cross-ventilation. The design meets the intent of the clause by integrating architectural quality and environmental responsiveness.

> *(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 within a heritage conservation area nor adjacent to a heritage item.

Therefore, this objective is not directly applicable.

> *(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 minor exceedance in FSR has no discernible adverse impact on adjoining amenity. The development complies with key built form controls including height, landscaping, and deep soil area. Overshadowing impacts have been tested via shadow diagrams and remain within acceptable limits under the principles of *Parsonage v Ku-ring-gai*. Privacy is preserved through screening and setback treatment. No view corridors are obstructed.

The proposed FSR variation is minor, functionally distributed, and well-integrated into a site-responsive and articulated design. The additional floor area does not generate any unreasonable environmental or amenity impacts and remains compatible with the emerging built form character. The variation supports the intent of the control and is considered acceptable in planning terms.

The objectives of the clause are therefore considered to have been met.

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

In terms of 'environmental planning grounds', while not defined in the EP&A Act or the Standard Instrument – Principal Local Environmental Plan, 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 decisions in this area.

The objects of the Act are as follows—

> *(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
> *(b) to promote the supply, delivery and maintenance of housing, including affordable housing,*
> *(c) to promote productivity through the development and management of the State and its resources,*
> *(d) to protect the environment, including the conservation of threatened species of native animals and plants and ecological communities and their habitats,*
> *(e) to promote resilience to climate change and natural disasters through adaptation, mitigation, preparedness and prevention,*
> *(f) to promote the sustainable management of built and cultural heritage, including*

Aboriginal cultural heritage,
(g) to promote good design, amenity and the proper construction and maintenance of built environments, including the protection of the health and safety of the occupants of buildings,
(h) to provide opportunities for participation in environmental planning and assessment,
(i) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(j) to promote a proportionate and risk-based approach to environmental planning and assessment,
(k) to promote the orderly and economic use and development of land.

- The proposal promotes the social and economic welfare of the community and a better environment through the proper management and conservation of the site's resources, with a residential planning use that is compatible with surrounding development and existing infrastructure.
- The development supports the supply, delivery and maintenance of housing, including the ongoing use of serviced land for residential purposes within the R2 Low Density Residential Zone.
- The proposal represents an orderly and economic use and development of land, consistent with the applicable Randwick City Council planning controls and the established residential zoning and pattern of development.
- Environmental values are protected through the avoidance of unacceptable impacts on the natural environment, including no identified impacts to threatened species, ecological communities or their habitats, and by maintaining appropriate landscaped areas as part of the development.
- The proposal promotes resilience to climate change and natural disasters by enabling contemporary built form outcomes that support adaptation and preparedness through compliant design and construction outcomes.
- The site is not a heritage item, is not located within a heritage conservation area, and is not identified as being in proximity to a heritage item, and the proposal maintains appropriate regard for built and cultural heritage, including Aboriginal cultural heritage.
- The proposal promotes good design and amenity by responding to the existing and desired residential character of the locality and managing potential amenity impacts to adjoining properties and the public domain.
- The development will utilise high-quality building materials and finishes and will be designed and constructed to meet relevant NCC/BCA requirements and access considerations to protect the health and safety of building occupants.
- The assessment process integrates relevant economic, environmental and social considerations to facilitate ecologically sustainable development, applying a proportionate and risk-based approach appropriate to the nature and scale of the development.

- The application provides opportunities for community participation through notification and public comment in accordance with the applicable statutory requirements and the Development Control Plan.

Ecologically Sustainable Development

Ecologically Sustainable Development (ESD) is a key object of the Environmental Planning & Assessment Act, 1979. The definition, consideration and conceptualisation of ESD was well explained by Justice Preston in *Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133*.

This included the "basic formulation" of "development that meets the needs of the present without compromising the ability of future generations to meet their own needs":

Six Principles can be considered and applied:

1. *Sustainable use - the aim of exploiting natural resources in a manner which is "sustainable" or "prudent" or "rational" or "wise" or "appropriate"*
2. *Effective integration of economic and environmental considerations in the decision making process*
3. *The precautionary principle (referred to in 6(2)(a) of the Protection of the Environment Administration Act)*
4. *Inter-generational equity - the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations*
5. *Conservation of biological diversity and ecologically integrity should be a fundamental consideration; and*
6. *Internalisation of environmental costs into decision-making for economic and other development plans, programmes and projects likely to affect the environment.*

The proposal is consistent with the principles of ESD as it does not exploit natural resources, it has been based soundly on economic and environmental considerations, the likely environmental impacts of the proposal are well understood and predictable, it doesn't deplete, does not unreasonably affect biological diversity or ecological integrity, and it provides an enduring asset for future generations.

12. Is there any other relevant information relating to justifying a variation of the development standard?

Lot: 21 Sec: 26 DP: 758912 (28 Gregory Street, South Coogee) is a fairly regular shaped allotment with a total area of 556.6m² and a 15.24m frontage to Gregory Street. The site has a cross fall from right to left of the site of 5.53m (RL 63.73 – RL 58.20). The proposed site currently contains a single dwelling approved to be demolished and replaced by an approved dual occupancy.

The development proposes Alterations and additions to an approved development for Demolition of existing structures and construction of two storey dual occupancy with basement garage.

The site is suitable for the development being compatible with the objectives of the zone. The development is compatible with the locality and the site attributes are conducive to development.

The proposed development is permissible with consent and complies with the objectives of the zone by providing a variety of housing types to satisfy the needs of the community, that ensures amenity for both the occupants and the surrounding neighbours, that is compatible with the density of the area.

The front of the site includes overhead power lines that run the length of Gregory Street. The site is not identified as a heritage item, adjoining or adjacent a heritage item or within a heritage conservation area. The site is not identified as being bushfire prone land or flood affected. The site is not identified as having any environmental constraints.

The proposed development is consistent with the existing and future development in the locality. The development has access from a public road and Council's utility services are available to the site. The site is considered to be suitable for development. The proposed development is within the public interest.

Conclusion

The proposed development has been designed in a way that it addresses the site abilities and constraints whilst satisfactorily demonstrating compliance with the Environmental Planning and Assessment Act 1979 (EPA&A 1979) and Council's local planning instruments and guidelines.

Accordingly, this 4.6 Exceptions to Development Standards is submitted in the belief that it deserves council's favourable consideration.

Appendix 3: DCP Compliance Table

Part C1: Low Density Residential (dated 27 June 2023)

<table>
<tr><th>DCP Clause</th><th>Controls</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td></td><td>Classification</td><td>Zoning = R2</td><td></td></tr>
<tr><td>2</td><td>Site planning</td><td>Site = 557sqm</td><td></td></tr>
<tr><td>3.1</td><td>Floor space ratio LEP 2012 = 0.65:1</td><td>Proposed = 0.72:1</td><td>No, see Clause 4.6 Objection.</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>No change to approved front setback of the building under the CDC.</td><td>N/A</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>No change to approved side setbacks of the building under the CDC.</td><td>N/A</td></tr>
<tr><td>4</td><td colspan="3">Building design</td></tr>
<tr><td>4.1</td><td colspan="3">General</td></tr>
<tr><td></td><td>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).</td><td>The proposed alterations and additions to the approved development satisfy he general building design controls, in particular the changes to the façade and vehicular entry.</td><td>Yes.</td></tr>
<tr><td>4.7</td><td colspan="3">Earthworks</td></tr>
<tr><td></td><td>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</td><td>The proposed alterations and additions detail additional excavation behind the already approved garage basement, existing conditions under the CDC will cover structural considerations in</td><td>Yes.</td></tr>
</table>

DCP Clause	Controls	Proposal	Compliance
	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.	relation to the additional works.	
5	**Amenity**		
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 i) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries ii) 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	A BASX Certificate has been provided with the application.	Yes.
6	**Car Parking and Access**		
6.1	**Location of Parking Facilities:**		
	Dual occupancies and new semi-detached dwellings		
	i) Single width garage or carport, including hard stand space in front. ii) Double garages permitted on dual street frontages or corner lots if consistent with predominant pattern. iii) One vehicle access per dwelling only permitted where: • Minimum landscaping achieved; • At least one parallel on-street parking space is maintained; and • No net loss of street trees.	Garage siting to each dwelling as approved under the CDC is not altered.	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.	Garage setbacks are not altered from the CDC approval. The reduced rear setback remains within the overall building envelope.	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	5.5m driveway width as approved under the CDC remains.	Yes.

DCP Clause	Controls	Proposal	Compliance
6.5	**Garage Configuration**		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or 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)	The siting of the garage remains as approved under the CDC. The garage width to each dwelling has been increased to a double width with double doors. The CDC approval is for single garages with single width garage doors. There are no objection to the changes to the garage width and doors as they remain recessed beneath the building and will not detract from the appearance of the dwelling within the streetscape.	Yes.

Responsible officer: Perry Head, Environmental Planning Officer

File Reference: DA/175/2026

D39/26

Draft Development Consent Conditions (Dwellings and Dual Occupancies)

Randwick City Council
a sense of community

Folder /DA No:	DA/175/2026
Property:	28 Gregory Street, SOUTH COOGEE
Proposal:	Alterations and additions to CDC approved attached dual occupancy including conversion of storage areas into car parking spaces, extension of basement to create additional storage space, extension of garage door and widening and extension of driveway.
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*
DA1.1 Rev B	NDRSN	16/2/2026	19/2/2026
DA11.1 Rev B	NDRSN	16/2/2026	19/2/2026
DA3.1 Rev B	NDRSN	16/2/2026	19/2/2026
DA3.2 Rev B	NDRSN	16/2/2026	19/2/2026
DA3.3 Rev B	NDRSN	16/2/2026	19/2/2026
DA3.4 Rev B	NDRSN	16/2/2026	19/2/2026
DA4.1 Rev B	NDRSN	16/2/2026	19/2/2026
DA5.1 Rev B	NDRSN	16/2/2026	19/2/2026

BASIX Certificate No.	*Dated*	*Received by Council*
1780251M_03	16/2/2026	19/2/2026

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. **Consent Requirement**

This consent must be implemented in conjunction with the approval granted under CDC/392/2025.

Condition Reason: To maintain consistency with the plans, documentation and requirements approved under CDC/392/2025.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

3. **Consent Requirements**

The requirements and amendments detailed in the 'General Conditions' must be

	Condition

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 as approved under the Complying Development Certificate.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

5. **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.

6. **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.

7. **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

Condition
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.
8. **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.

BEFORE BUILDING WORK COMMENCES

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

	Condition
10.	**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.
11.	**Construction Site Management Plan** A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development: • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures • site access location and construction • methods of disposal of demolition materials • location and size of waste containers/bulk bins • provisions for temporary stormwater drainage • construction noise and vibration management • construction traffic management details • provisions for temporary sanitary facilities measures to be implemented to ensure public health and safety. The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works. A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request. Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
12.	**Construction Site Management Plan** A *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.

DURING BUILDING WORK

	Condition
13.	**Site Signage** It is a condition of the development consent that a sign must be erected in a

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Condition

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.

14. **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.

15. **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

Condition

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.

16. **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

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Condition
Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council. j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details. Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.
17. **Excavations and Support of Adjoining Land** The adjoining land and buildings located upon the adjoining land must be adequately supported at all times and in accordance with section 74 of the Environmental Planning and Assessment Regulation 2021 and approved structural engineering details. Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings. Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition
18. **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.
19. **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.

Development Application Report No. D40/26

Subject: 2/105 Brook Street, Coogee (DA/349/2026)

Executive Summary

Proposal:	Construction of new rear terrace to the second floor level of an existing semi-detached dwelling
Ward:	East Ward
Applicant:	Adele Langton
Owner:	Adele Langton
Cost of works:	$66 000
Reason for referral:	The application includes a Clause 4.6 Objection to the maximum building height development standard.

Recommendation

A. That the RLPP is satisfied that the Applicant's written requests to vary the development standard relating to building height 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. 349/2026 for the construction of a new rear terrace to the second floor level of an existing semi-detached dwelling, at No. 2/105 Brook Street Coogee subject to the development consent conditions attached to the assessment report.

Attachment/s:

1. RLPP Dev Consent Conditions (dwellings dual occ) - DA/349/2026 - 2/105 Brook Street, COOGEE NSW 2034 - DEV - A Langton

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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 contravenes the development standard for building height by more than 10%

The proposal seeks development consent for the construction of a rear terrace to the second floor of the existing semi-detached dwelling.

The key issues associated with the proposal relate to the variation to the maximum height of building development standard under Clause 4.3 of the Randwick Local Environmental Plan (RLEP) 2012.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The site is located on the eastern side of Brook Street and comprises a frontage of 8.935 metres, a depth of 48.77 metres, and a total area of 303 square metres. The dwelling forms part of a strata-titled semi-detached development (SP 94243), as shown in Figures 1 and 2.

The surrounding locality is predominantly residential, characterised by a mix of semi-detached and freestanding dwellings, along with multi-unit housing permissible within the R3 Medium Density Residential zone.

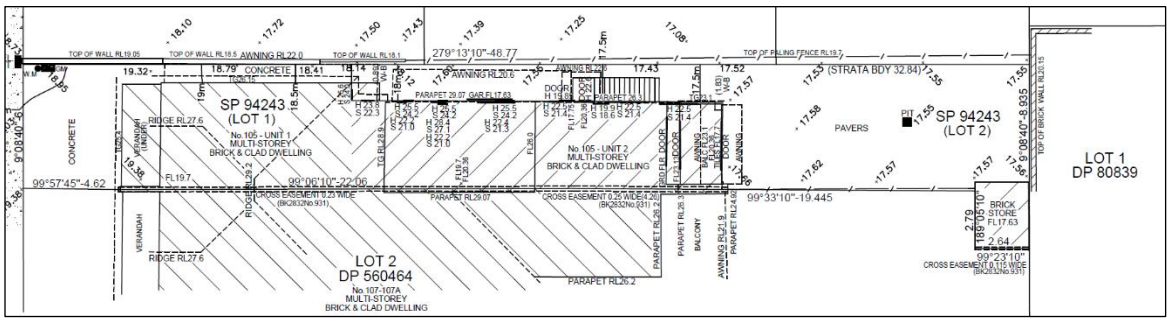


Figure 1: Site Survey



Figure 2: Front of subject site – showing pair of semi-detached dwellings (Source: Google Maps, April 2021)

The proposed terrace will be situated at the rear roofed area of the semi-detached dwelling at 2/105 Brook Street. Views of this roofed area are provided in Figures 3 to 6 below.

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Figure 3: Easterly view from existing living room (2nd Floor)



Figure 4: Location of proposed terrace – as viewed from existing living room (2nd Floor)



Figure 5: North-easterly view from existing living room (2nd Floor)



Figure 6: South-easterly view from existing living room (2nd Floor)

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Relevant history

DA/162/2022 relates to alterations and additions to the existing semi-detached dwelling, including the installation of a new lift (refer to Figures 7 and 8). The consent was issued under the previous ownership and has not yet been acted upon. Council records indicate that no Construction Certificate has been issued for this development.



Figure 7: Approved Floor Plans under DA/162/2022

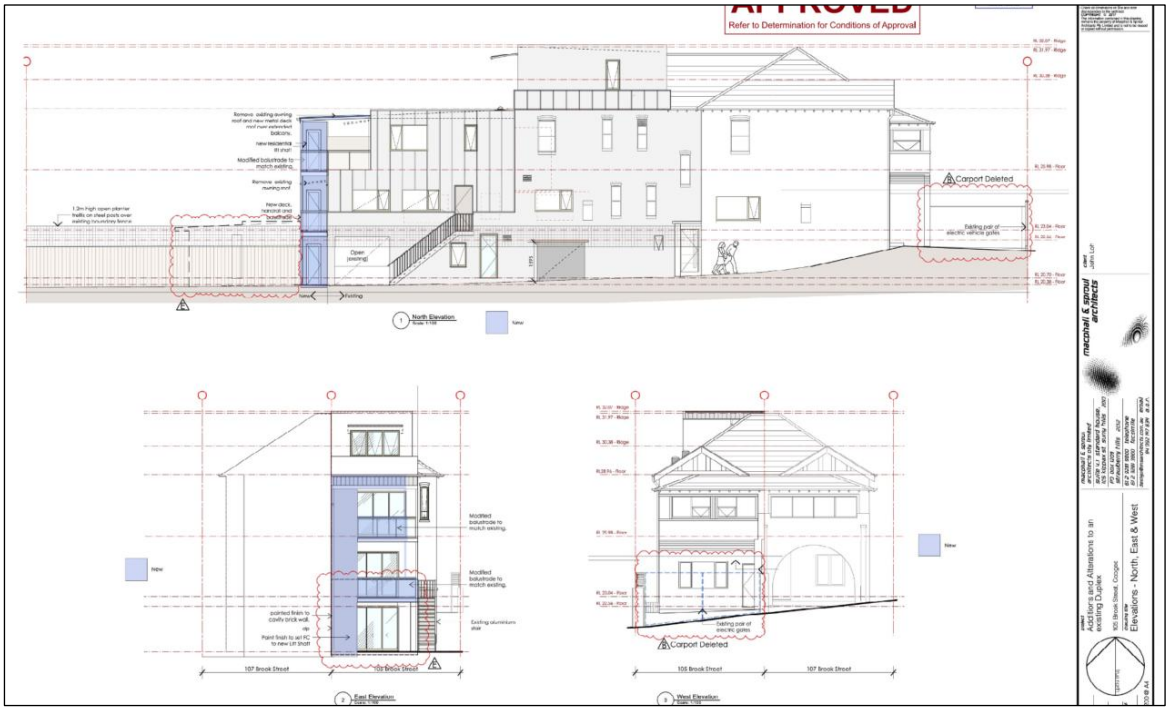


Figure 8: Approved Elevations under DA/162/2022

Proposal

The application details the construction of an upper level terrace off the living room within the top level (2nd Floor) of the semi-detached dwelling (refer to Figures 9 to 11).

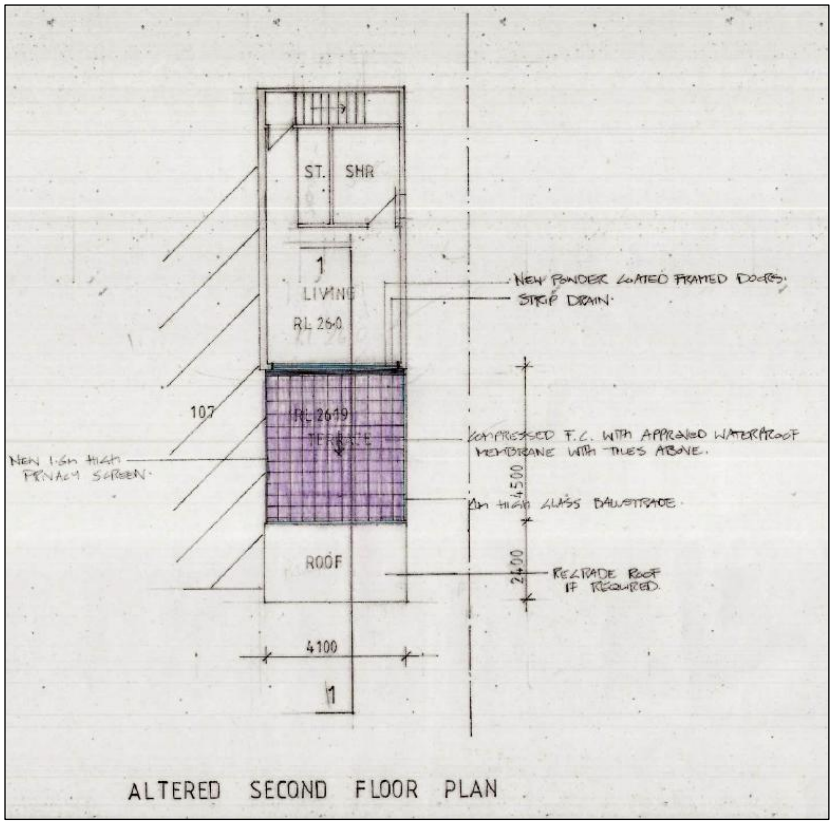


Figure 9: Proposed 2nd Floor Plan showing terrace

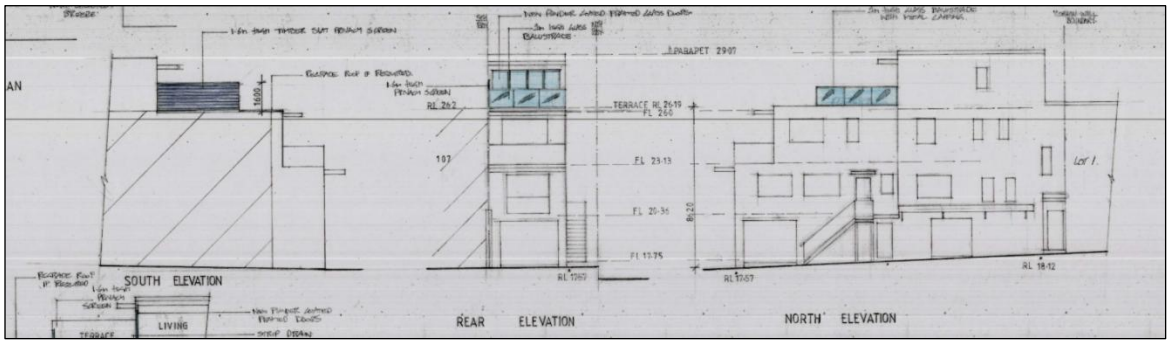


Figure 10: Proposed Elevations

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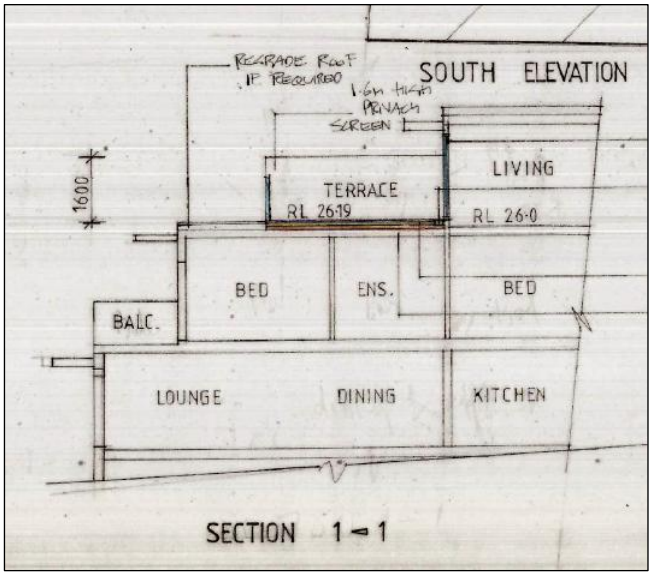


Figure 11: Proposed Section

3. Notification

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

4. Relevant Environment Planning Instruments

4.1. SEPP (Sustainable Buildings) 2022

A BASIX Certificate has been issued for the proposed development A1840179, dated 1/4/2026.

4.2. Randwick Local Environmental Plan 2012 (LEP)

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

The site is zoned R3 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 continue to provide for housing within the R3 Residential Zone.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3(2A): Building height (max)	9.5m	10.74m	No, see Clause 4.6 Objection to development standard.

4.2.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the development standard is discussed in section 5 below.

5. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3(2A): Building height (max)	9.5m	10.74m	1.24m	13%

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 Exception to the Height of Buildings development standard (Cl 4.3(2A))

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

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

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

2. 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 relevant objectives of the standard are still achieved.

The objectives of the building height standard are set out in Clause 4.3 (1) of RLEP 2012. The Applicant has addressed each of the objectives as follows:

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the numerical non-compliance relates to a small portion of the proposed works which is a transparent balustrade, privacy screen and new sliding doors for access to the terrace.

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

The Applicant's written justification demonstrates that this objective is satisfied by the provision of a BASIX certificate which shows that the development meets the relevant water and energy saving targets.

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the terrace is recessed from the rear of the dwelling and does not impact any views from the adjoining properties. There are no overshadowing of any consequence to adjoining properties with overshadowing being upon the rear of the subject property, privacy is maintained by the installation of privacy screens and the overall bulk and scale of the development sits comfortably in the context of a densely built up area.

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

3. 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 overall building height at 11.32m remains unaltered,
- The non-compliance relates to a small portion of the proposed works, which are the balustrade, privacy screen and new sliding door,
- The non-compliance remains well below the existing height of the building,
- The location of the terraced, recessed at the rear of the building will not be visible or result in any impact within the local streetscape,
- The height of the terrace, balustrades, privacy screen and sliding doors remain subservient to the established bulk and scale of the nearby and adjoining three storey residential flat buildings,
- There is no impact to the nearby heritage item,
- The non-compliance does not result in any visual or acoustic privacy impacts and will not result in any appreciable difference to shadow impacts of the existing building,
- There are no view loss impacts as a result of the development,
- The glass balustrade will assist in minimizing the visual impact of the development,
- Overall the proposal and the non-compliance with the building height control will remain compatible with the existing and desired future character of the locality by remaining commensurate with the numerous substantial buildings in the locality, of 3 and 4 storey developments consisting of residential flat buildings, mixed commercial and shop top housing.

Assessing officer's comment: The above justification and supporting considerations provided in the Applicant's written request have been reviewed and are generally concurred with. In particular, the request demonstrates that the non-compliance is confined to a minor portion of the built form. The components that exceed the height remain visually subordinate to the established bulk and scale of surrounding 3-storey residential flat buildings.

The Applicant has also satisfactorily shown that the recessed location of the terrace ensures no visibility from the public domain and no impact on the local streetscape, with no resulting view loss, privacy impacts, acoustic concerns or additional overshadowing. The use of a glass balustrade further reduces visual bulk and assists in integrating the works with the existing built form. The

proposal remains compatible with the existing and desired future character of the locality, which includes numerous substantial residential and mixed-use buildings of comparable scale.

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development con

6. Development control plans and policies

6.1. 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 2.

7. 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)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(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	No submissions have been completed.

Section 4.15 'Matters for Consideration'	Comments
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.

7.1. Discussion of key issues

The fundamental matter for consideration is the assessment of the Applicant's Clause 4.6 written request seeking to contravene the maximum building height development standard. This assessment is necessary as the proposal results in a further exceedance of the 9.5 metre height limit prescribed under Clause 4.3 of the Randwick Local Environmental Plan (RLEP).

In reviewing the Applicant's Clause 4.6 Objection, it is evident that the request provides a well-reasoned and site-specific justification for the variation. The Applicant has demonstrated that the non-compliance arises only from a minor and localised component of the works (namely the balustrade, privacy screen and sliding door associated with the recessed rear terrace) and that these elements remain well below the existing building height and do not contribute to additional bulk or scale.

The written request also adequately addresses the underlying objectives of Clause 4.3, particularly in relation to ensuring that building height is compatible with the desired future character of the locality, minimises visual impacts, and maintains appropriate relationships with adjoining development. The Applicant has shown that the works will not be visible from the public domain, will not impact the nearby heritage item, and will not result in adverse environmental effects such as overshadowing, loss of privacy, view loss or acoustic impacts. Furthermore, the proposed glass balustrade assists in reducing visual massing and ensures the addition remains subordinate to the established three-storey built form in the surrounding area.

Overall, the Applicant's Clause 4.6 request satisfactorily demonstrates that strict compliance with the development standard is unnecessary in this instance and that there are sufficient environmental planning grounds to justify the contravention.

8. Conclusion

That the application to provide for a rear upper level terrace be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives of the RLEP 2012 and RDCP 2013, achieving a high-quality design that balances improved amenity for future occupants with the protection of neighbourhood character and streetscape values in Coogee.
- The development aligns with the objectives of the R3 Medium Density Residential zone, continuing to provide suitable housing while maintaining the established and desired residential character and safeguarding the amenity of surrounding residents.
- The works enhance the amenity and functionality of the dwelling without generating unreasonable impacts on neighbouring properties.
- The proposal, including the minor height non-compliance, satisfies the objectives of Clause 4.3, as the scale and design are appropriate for the site, compatible with the desired future character, and do not result in adverse impacts relating to visual bulk, privacy, overshadowing or views.
- The rear terrace is integrated with the existing built form, maintaining privacy and presenting as a subordinate, low-impact addition.

- The terrace will have minimal amenity or view impacts and is not intended to function as the primary private open space, noting that the dwelling benefits from several alternative open-space areas.

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

RANDWICK LOCAL ENVIRONMENTAL PLAN 2012 (RLEP)
CLAUSE 4.6
REQUEST FOR CONTRAVENTION OF DEVELOPMENT STANDARD

APPLICANT: Mr. Tony Arpin
ADDRESS: Lot 2 SP 94243 No. 105 Brook Street, Coogee
PROPOSAL: Proposed terrace to the rear of second floor level with access doors

DEVELOPMENT STANDARD:
Maximum Height of Building under Clause 4.3 (2A) of the RLEP.

INTRODUCTION
This submission is a Request for Contravention of the above Development Standard in relation to proposed terrace to the rear of second floor level with access doors, at Lot 2 SP 94243 No. 105 Brook Street, Coogee, on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. The proposal achieves the objectives of Clause 4.6 of the RLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The development standard to which the request relates
Clause 4.3(2) states:

(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.

However, Clause 4.3 (2A) states:

(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.

The corresponding map (Figure 1) identifies a maximum height of buildings of 12m, however read in conjunction with Clause 4.3 (2A) results in a maximum height limit of 9.5m.

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Figure 1: Maximum height of buildings in respect of the subject site (Source: RLEP Height of Buildings Map)

The objectives of the development standard

The objectives of the development standard, as stipulated under Clause 4.3 of the RLEP, are:

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

The nature of the departure from the development standard

The overall building height of the existing building will remain unaltered at 11.32m.

The proposed works will have a maximum building height of 10.74m. (Top of sliding door opening), equating to a strict numerical departure 1.24m or 13% from the standard.

The extent of the departure is demonstrated in the image below:

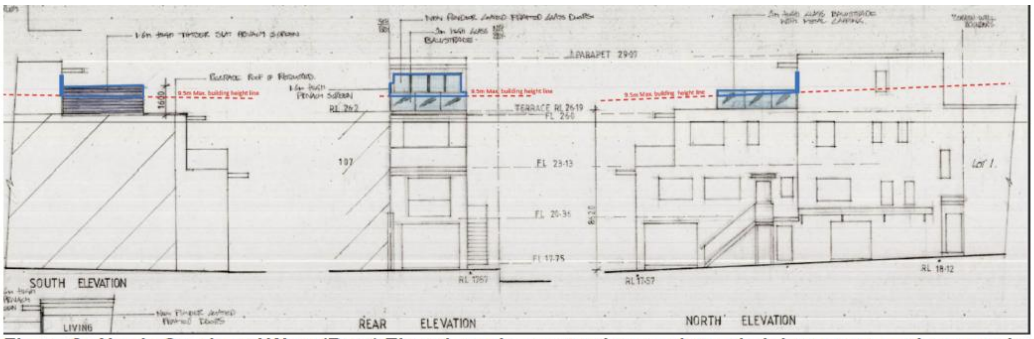


Figure 2: North, South and West (Rear) Elevations demonstrating maximum height to proposed new works – Top of sliding door window and maximum height line (Source: Architectural Drawings)

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the maximum allowable height of buildings is unreasonable and unnecessary in the circumstances for the following reasons:

- The strict numerical non-compliance relates to a small portion of the proposed works comprising a transparent balustrade, a privacy screen and a sliding door opening only (see figure 2).
- The strict numerically non-compliant components remain well under the maximum overall height of the building, which will remain at 11.32m.
- The non-compliant component of the privacy screen, being the highest visual component when viewed from surrounding properties, is not significantly over the 9.5m maximum, such that the apparent bulk and scale and shadows cast will not be vastly different to those of a compliant form of development.
- The location of the proposed deck at the rear of the building and being recessed from the outer edge of the level below, will ensure that the strict non-compliant component will not be readily visible from the Brook Street presentation of the dwelling, minimising any associated visual impact.
- The adjoining 3-storey residential flat buildings (RFBs) to the north and one site removed to the south will ensure that the overall presentation of the dwelling, inclusive of the strict numerically non-compliant components, will be acceptable and subordinate to the immediately surrounding built form, as is evident in the photo below:



Plate 1: 3 Storey RFBs immediately to the north and one site removed to the south showing acceptable built form context (Source Google Earth)

- The amenity impacts associated with the strict numerically non-compliant components in respect of height, bulk and scale, solar access and overshadowing will be minimal and no view loss will be associated with the proposed works.
- The glass construction of the balustrade and sliding door opening will assist in minimising the visual impact of the non-compliant components.
- The considered form and massing of the end development, which includes a stepping of the built form to the rear and horizontal and vertical articulations, will effectively reduce the visual bulk of the end development as seen from the side and rear elevations.
- Notwithstanding the strict numerical departure from the development standard, the proposed development, inclusive of the non-compliant component, in this instance, achieves the relevant objectives of the maximum Height of Buildings Standard, in that:
    - The size and scale of the dwelling, inclusive of the proposed deck area will remain compatible with the existing and desired future character of the locality and will be commensurate with numerous substantial residential and shop top housing developments within the immediate locality, many of which present as 3 and 4 storey developments to surrounding streetscapes, as demonstrated in the images below:





Plates 2 and 3: 3 and 4 storey developments in Brook Street within the immediate vicinity (Source Google Earth)

- The site will not adversely impact any heritage items or heritage conservation areas in proximity to the proposed works including the heritage item immediately adjoining at No. 201-203 Coogee Bay Road.
- In addition to being compatible with the desired future character of the area, the considered bulk and scale of the built form inclusive of the non-compliant components will ensure that the proposed development will not give rise to adverse amenity impacts on adjoining properties in that:
  - As demonstrated above, the proposed development is commensurate with that of surrounding development and will not give rise to any unacceptable visual bulk impacts.
  - The strictly numerical non-compliances will not contribute to any additional visual or acoustic privacy impacts beyond those associated with the compliant portions of the development, which are considered to be acceptable and consistent with those anticipated under the DCP controls.
  - Shadows cast from the proposed development will be substantially the same as those cast by a compliant built form.
  - No view loss impacts to and/or from adjoining, surrounding properties and the public domain will be Experienced due to the non-compliant components of the development.

- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Chief Justice Preston of the NSW Land and Environment Court in the case of in *Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the objectives of the Height of Buildings Standard, in this instance, are achieved and the request for contravention is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a Clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment
The underlying objectives are relevant and achieved on this occasion, despite the strict numerical non-compliance with the standard.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment
In this instance, the underlying objectives or purposes would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve on-site amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment
The abovementioned standard has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment
The zoning of the land on this occasion is not regarded as unreasonable or inappropriate.

As such, the request on this occasion satisfies more than one means of justifying contravention of the standard (one only required) and is manifestly worthy of support.

The environmental grounds which justify contravening the development standard
Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The materials and finishes used in the proposed works(inclusive of the non-compliant components) will be compatible with the streetscape and adjoining developments. Materials will be robust, energy efficient and recycled where possible.
- The proposed development complies with other key numerical LEP Development Standards and DCP Controls, including floor space ratio, site coverage and other site planning provisions.
- The environmental impacts associated with the strict numerical non-compliance, including those relating to solar access and overshadowing, bulk and scale and visual and acoustic privacy, are acceptable and within those envisaged under Council's DCP controls.
- The intensity of the development is commensurate with the capacity of the existing and planned infrastructure within the locality.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration with surrounding developments.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from maximum Height of Buildings Standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

Consistency with Clause 4.6 of the RLEP
The objectives of Clause 4.6 are:

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

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this variation is well founded and worthy of support.

Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the Height of Building standard and the acceptable environmental impacts associated with the departure from the standard, have been demonstrated on this occasion.

The justification for the departure from the development standard is worthy of support.

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Appendix 2: DCP Compliance Table

2.1 Part C1: Low Density Residential (dated 27 June 2023)

<table>
<tr><th>DCP Clause</th><th>Controls</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td></td><td>Classification</td><td>Zoning = R3</td><td></td></tr>
<tr><td>2</td><td>Site planning</td><td>Site = 303sqm</td><td></td></tr>
<tr><td>3</td><td colspan="3">Building envelope</td></tr>
<tr><td>3.2</td><td>Building height</td><td></td><td></td></tr>
<tr><td></td><td>Building height LEP 2012 = 9.5m</td><td>Proposed = 10.74m</td><td>No, see Clause 4.6 Objection.</td></tr>
<tr><td>3.3</td><td colspan="3">Setbacks</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>Proposed = 1830mm to northern and nil to party wall.</td><td>No objections as the terrace remains within the building envelope and privacy screening will maintain privacy to the adjoining properties.</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</td><td>Minimum = 8m
Proposed = 9.6m</td><td>Yes.</td></tr>
<tr><td>4</td><td colspan="3">Building design</td></tr>
<tr><td>4.1</td><td colspan="3">General</td></tr>
<tr><td></td><td>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).</td><td>The proposal has minimal impact on the building design controls.</td><td>Yes.</td></tr>
<tr><td>4.3</td><td colspan="3">Alterations and additions to semi-detached and dual occupancy (attached) dwellings</td></tr>
<tr><td></td><td>i) Respect and enhance architectural character of pair, including symmetry
ii) Setback upper addition from street (to rear) with substantial portion of existing front intact
iii) Locate upper addition behind apex of hipped roofed houses
iv) Setback upper addition from gable end 100% of the height increase and retain any existing gable features and chimneys
v) Low profile roof form that is visually secondary to existing</td><td>No objections as the development is to the rear of the building and not visible from the street and has no impact to the street presentation of the pair of semi-detached dwellings.</td><td>Yes.</td></tr>
</table>

DCP Clause	Controls	Proposal	Compliance
	vi) Avoid exposure of existing blank party walls vii) Materials enhance character of the pair		
4.4	**Roof terraces and balconies**		
	i) Locate on stepped buildings only (not on uppermost or main roof) ii) Where provided, roof terraces must: • Prevent overlooking • Size minimised • Secondary POS – no kitchens, BBQs or the like • Maintain view sharing, minimise structures and roof top elements • Be uncovered and comply with maximum height iii) Locate above garages on sloping sites (where garage is on low side) **Note: Existing roof terraces in locality that do not comply with the above controls should not be utilised as precedent in seeking variations to the controls outlined in this section. This is to ensure that the objectives of low density residential development are met.*	The proposed terrace is within the rear upper level stepped from the rear elevation and does not occupy the whole roof plate. Privacy screening is included to maintain privacy. The terrace is open and accessed off the rear upper level living room and contains no services.	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	To be conditioned.	Subject to condition.
5	**Amenity**		
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 i) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries ii) 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	The proposal includes a BASIX Certificate which demonstrates the sustainability of the proposal.	Yes.
5.3	**Visual Privacy**		

DCP Clause	Controls	Proposal	Compliance
	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)	No privacy impacts from the rear sliding doors as they look upon the subject deck, viewing from the rear is a significant distance to the buildings behind which will mitigate direct overlooking.	Yes.
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) Minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	A privacy screen is proposed to the southern side of the roof deck which will maintain privacy to those adjoining properties.	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.	No impact on views which are not across this property.	Yes.

Responsible officer: Perry Head, Environmental Planning Officer

File Reference: DA/349/2026

D40/26

Draft Development Consent Conditions (Dwellings and Dual Occupancies)

Randwick City Council
a sense of community

Folder /DA No:	DA/349/2026
Property:	2/105 Brook Street, COOGEE
Proposal:	Construction of a new rear terrace to the second-floor level of an existing semi-detached dwelling.
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*
21/26	Peter Banfield	24/1/2026	1/4/2026

BASIX Certificate No.	*Dated*	*Received by Council*
A1840179	1/4/2026	1/4/2026

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.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

2. **Consent Requirements**

The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.

Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.

3. **External Colours, Materials & Finishes**

The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for

D40/26

Condition

the development.

Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.

4. **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.

5. **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.

BEFORE BUILDING WORK COMMENCES

Condition

6. **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

Condition

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.

7. **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.

8. **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.

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DURING BUILDING WORK

Condition

9. **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.

10. **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.

11. **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

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Condition

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.

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.

Condition Reason:

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

12. **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

Condition
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.
13. **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.

OCCUPATION AND ONGOING USE

Condition
14. **External Lighting** External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. Condition Reason: To protect the amenity of the surrounding area and residents.

DEMOLITION WORK

BEFORE DEMOLITION WORK COMMENCES

Condition
15. **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)

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Condition

- 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

16. **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

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Condition
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. D41/26

Subject: 301 Malabar Road, Maroubra (DA/258/2026)

D41/26

Executive Summary

Proposal:	Amendments to development consent for DA/157/2021 including reconfiguration of the internal layout of the dwelling with new lift, conversion of attached carport to garage, new balcony at loft level, changes to pool deck and alterations to structural columns at basement and lower ground floor levels.
Ward:	Central Ward
Applicant:	P Thakur
Owner:	P Thakur
Cost of works:	$495,000.00
Reason for referral:	The development contravenes the development standard for building 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. DA/258/2026 for *Amendments to development consent for DA/157/2021 including reconfiguration of the internal layout of the dwelling with new lift, conversion of attached carport to garage, new balcony at loft level, changes to pool deck and alterations to structural columns at basement and lower ground floor levels,* at No. 301 Malabar Road, Maroubra subject to the development consent conditions attached to the assessment report.

Attachment/s:

1. DA/157/2021 - Development Consent - 301 Malabar Road, Maroubra
2. RLPP Dev Consent Condition - DA/258/2026 - 301 Malabar Road, Maroubra

D41/26



Subject Site

Submissions received

North

Locality Plan

1. Executive summary

This Report will assess DA/258/2026 (*the Application)* for 301 Malabar Road, Maroubra (*the Subject Site*) against the relevant heads of consideration under Section 4.15 of *Environmental Planning and Assessment Act 1979 (the Act).*

The Application seeks consent for *"Amendments to development consent for DA/157/2021 including reconfiguration of the internal layout of the dwelling with new lift, conversion of attached carport to garage, new balcony at loft level, changes to pool deck and alterations to structural columns at basement and lower ground floor levels"*

The Application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for building height by more than 10%. The breach is largely the result of previous excavation works undertaken on the site.

The key issues associated with the proposal relate to views, setback encroachment, and an increase to the three-storey presentation of the subject dwelling.

The Application is recommended for approval subject to non-standard conditions that require amendment to the landscaping, southern elevation, additional privacy measures, detail, and deletion of the loft roof terrace.

2. Site Description and Locality

The Subject Site is located at 301 Malabar Road, Maroubra and is legally identified as Lot 26 in Deposited Plan 12218. It is generally regular in shape, measures 752.5sqm by survey, and provides a single 12.19 metre frontage to Malabar Road.

The Subject Site is improved by an existing dwelling house which is three storeys but presents single storey to Malabar Road. The presentation of the Subject Site is a result of its significant slope, with an approximate 10 metre level change from the street to the rear boundary.

The surrounding area comprises similar low density dwellings, which are designed in accordance with the sloping topography. Immediately to the south of the Subject Site is existing two storey shop top housing development.



Figure 1 – Subject Site from Malabar Road (source: Council staff)



Figure 2 – Rear elevations of the Subject Site (source: Council staff)



Figure 3 – 303 Malar Road from ground floor balcony of the Subject Site (source: Council staff)



Figure 4 – 303 Malabar road from ground floor balcony of the Subject Site (source: Council staff)



Figure 5 – 299 Malabar Road from rear of the Subject Site, looking north (source: Council staff)

3. Relevant history

DA/157/2021 was approved on 7/05/2021 and approved "*alterations and additions to existing dwelling"*

CC/114/2026 (*Council's record*) is the Construction Certificate for DA/157/2021 which was lodged on 5/05/2026. DA/157/2021 has accordingly been activated and has not lapsed.

Works have not commenced.

A comparison of DA/157/2021 and the works proposed through the Application is provided under *4. Application* below.

4. Application

The Application seeks to amend DA/157/2021 to alter the previous approval applicable to the under the previous consent. Comparative Figures of that which is approved and proposed is provided below along with an itemised list of amendments.

Basement
- Increased basement excavation area with new lift, bathroom, and storage;
- New pool pump underneath approved deck extension; and
- New pool gate and caping.

Lower Ground Floor
- Increase excavation into subfloor to provide plant / service room;
- Extension of north and south side walls to previous balcony spaces; and
- New lift and internal reorganisation.

Ground Floor
- Conversion of carport into four car garage – setback of garage moved off boundary;
- Extension of living room over previously approved balcony area, 20sqm northern balcony to remain;
- Paving of front setback previously approved as permeable surfaces;
- Movement of southern setback 500mm to south boundary;
- New northern windows; and
- Internal reconfiguration.

D41/26

First Floor

- Extension of master bedroom into previously approved balcony area;
- First floor balcony extended significantly along southern elevation;
- Removal of approved first floor planter beds to front and rear of dwelling;
- Front setback increased from 3m to 3.7m on southern side and increased 2m on northern side; and
- Infill of previous staircase void and internal reconfiguration.

Loft / Second Floor

- 1.5m front setback encroachment;
- 1.5m side setback encroachment;
- New loft balcony / roof terrace;
- Increased ceiling height from 2285mm to 2550mm; and
- Removal of roof planters.

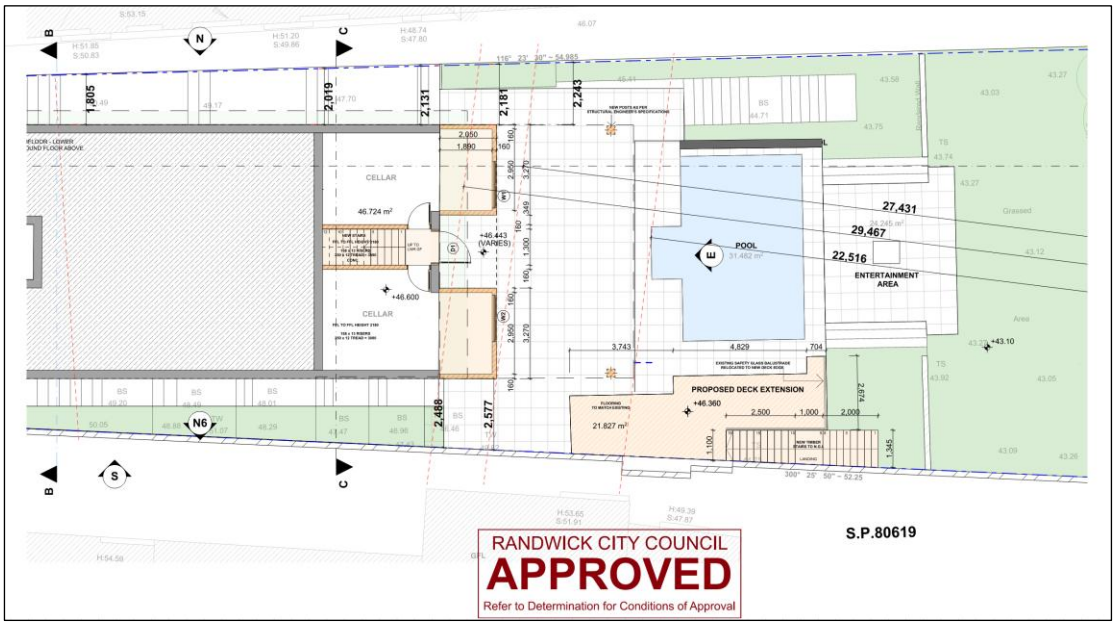


Figure 6 – Approved basement plan DA/157/2026

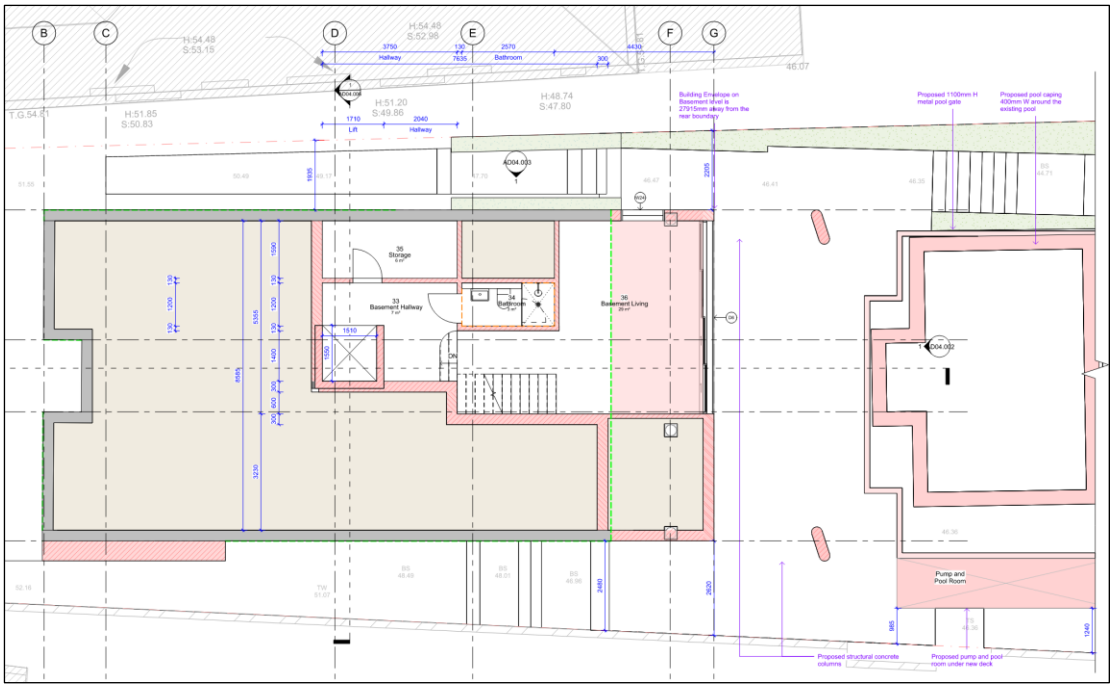


Figure 7 – Proposed basement plan Rev C – DA/258/2026

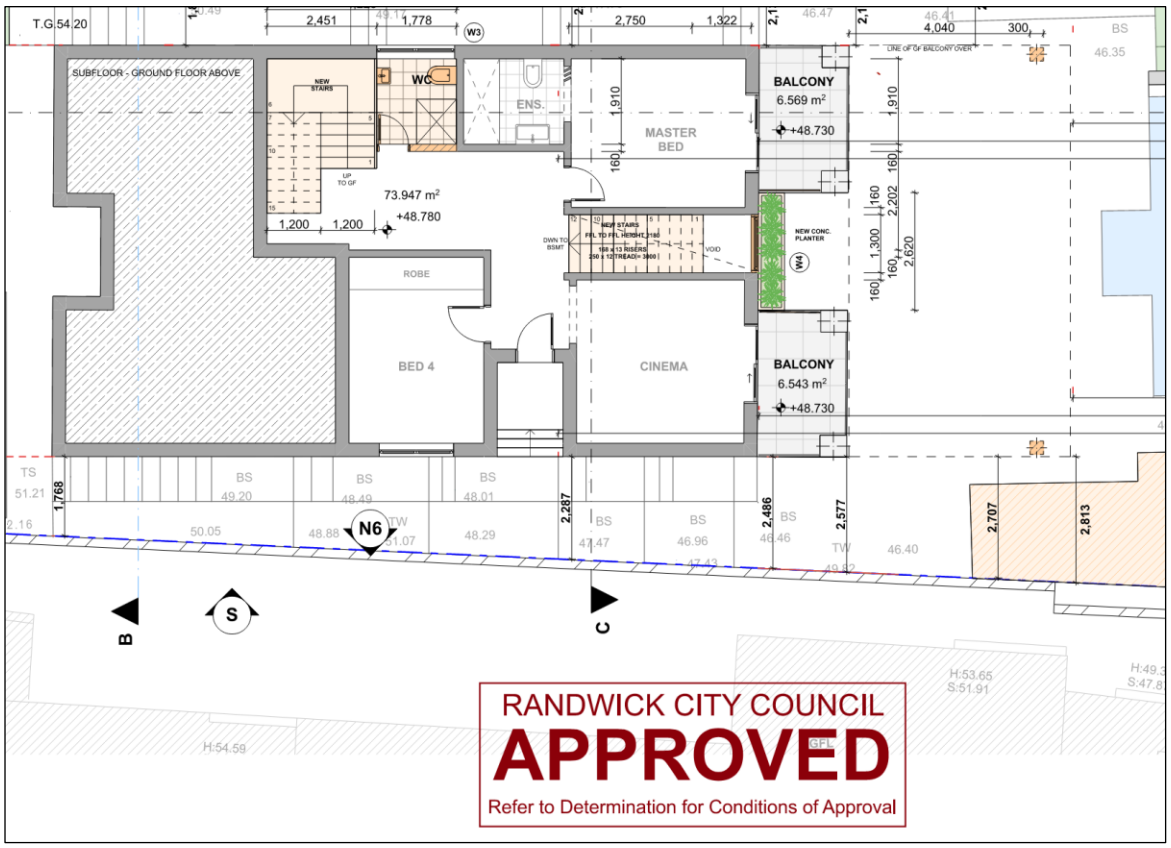


Figure 8 – DA/157/2021 approved lower ground floor.

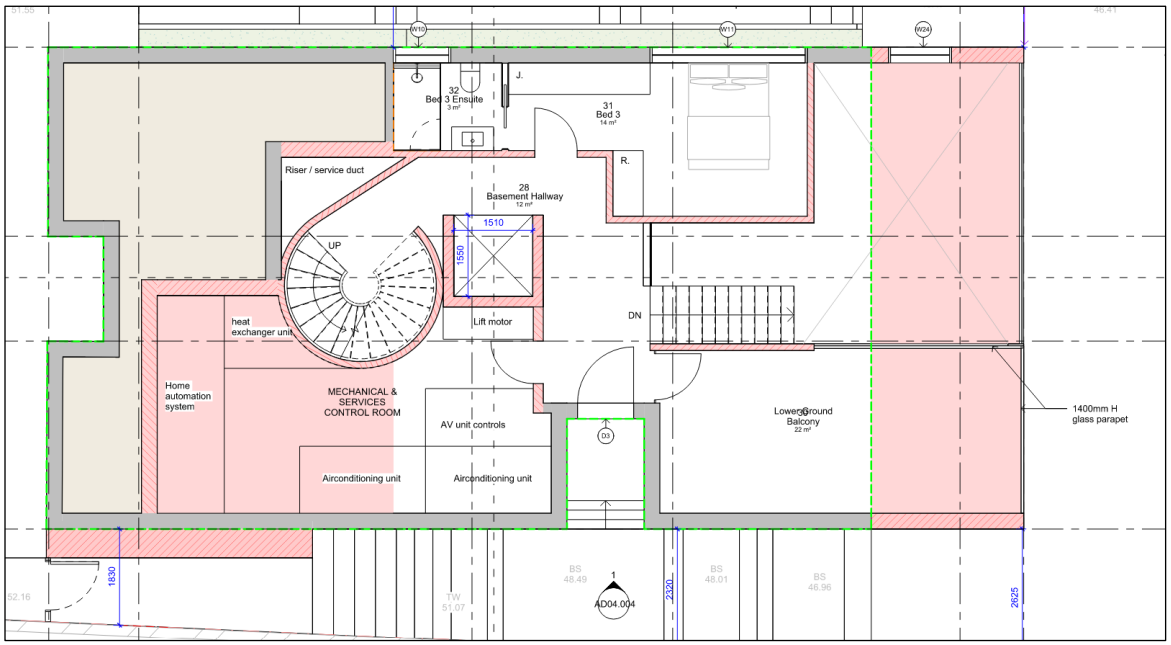


Figure 9 - Proposed lower ground floor plan Rev C – DA/258/2026

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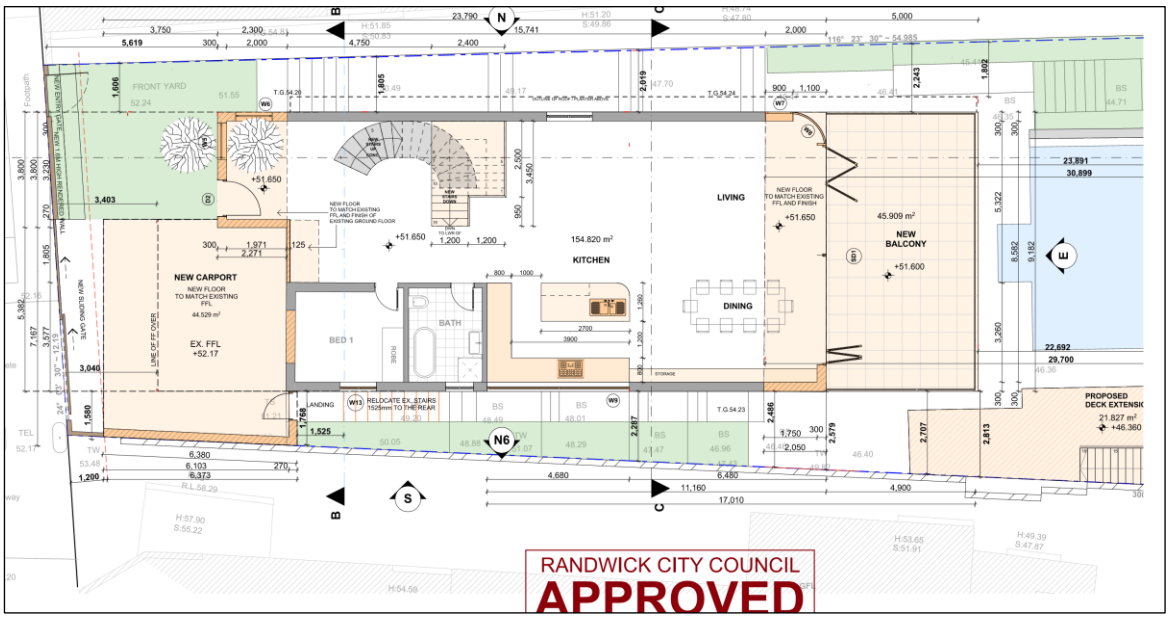


Figure 10 – DA/157/2021 approved ground floor plan.

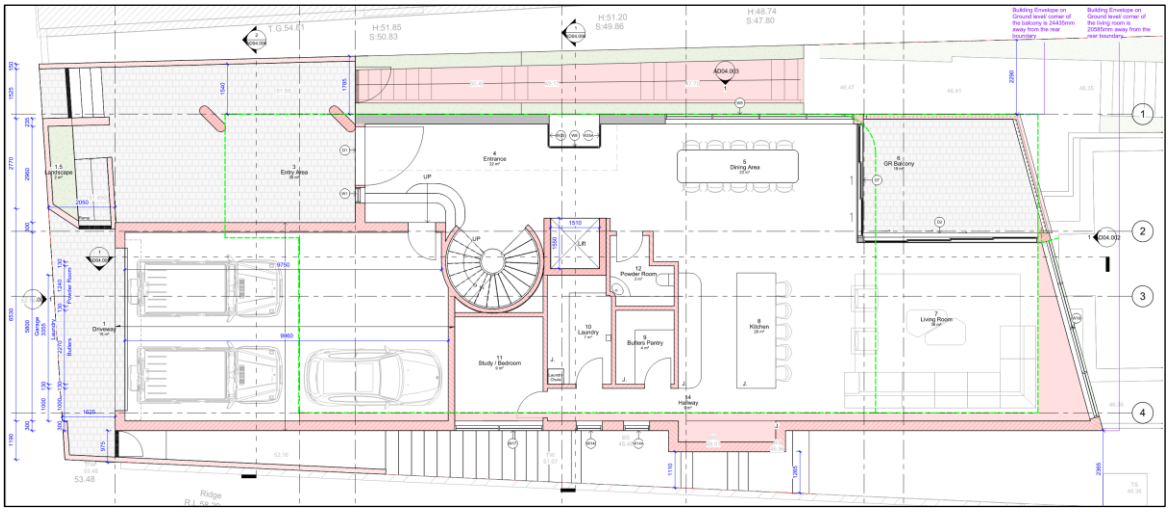


Figure 11 - Proposed ground floor plan Rev C – DA/258/2026

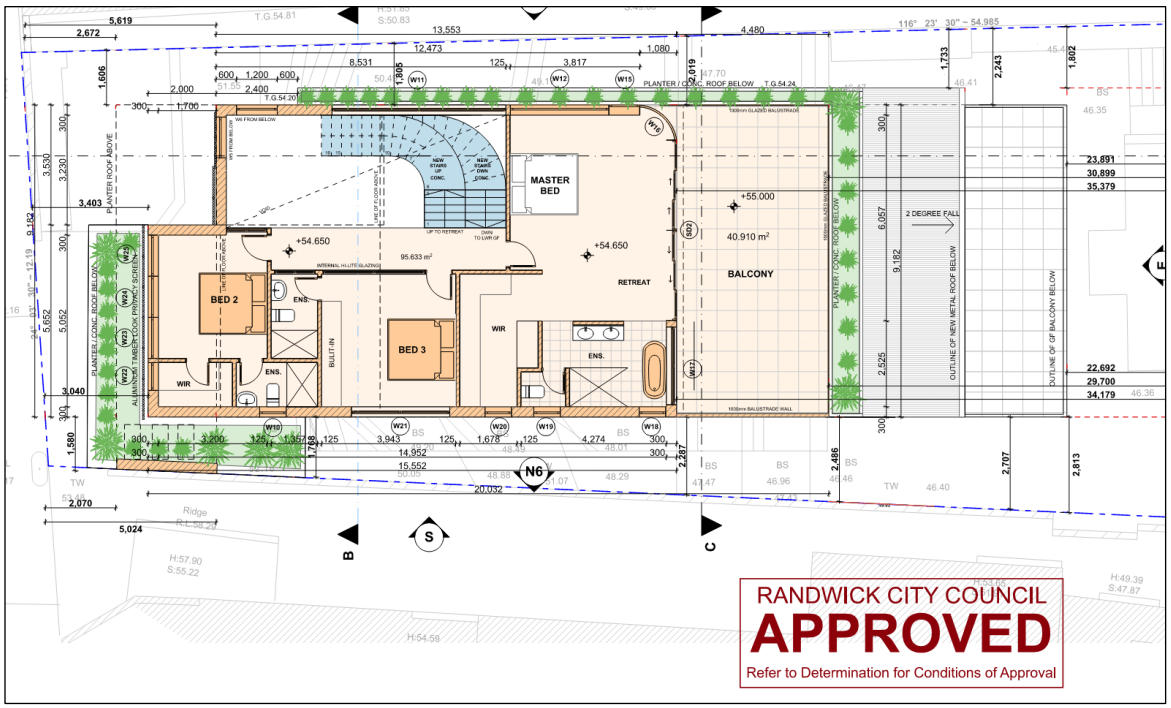


Figure 12 – DA/157/2021 approved first floor plan

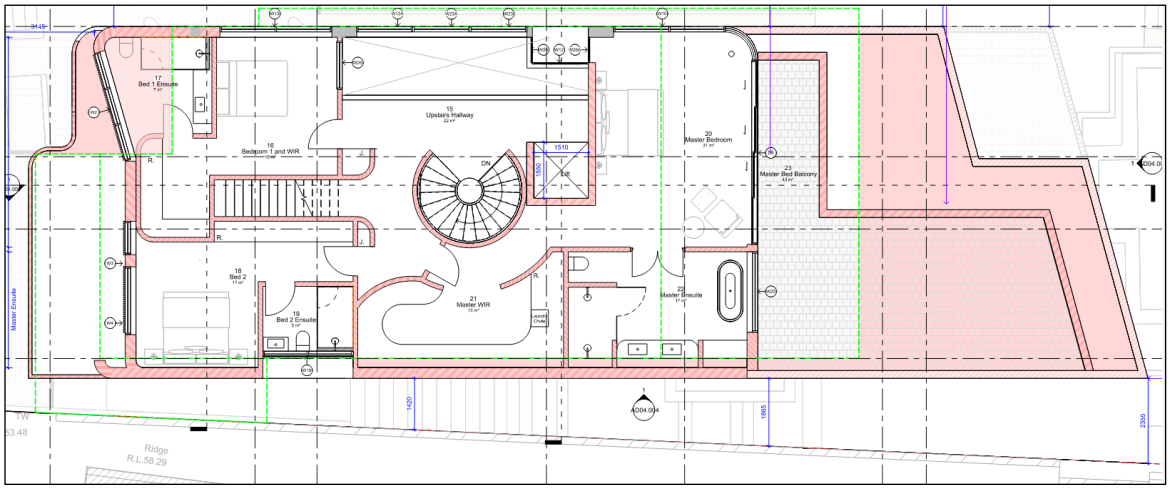


Figure 13 – Proposed first floor plan Rev C – DA/258/2026

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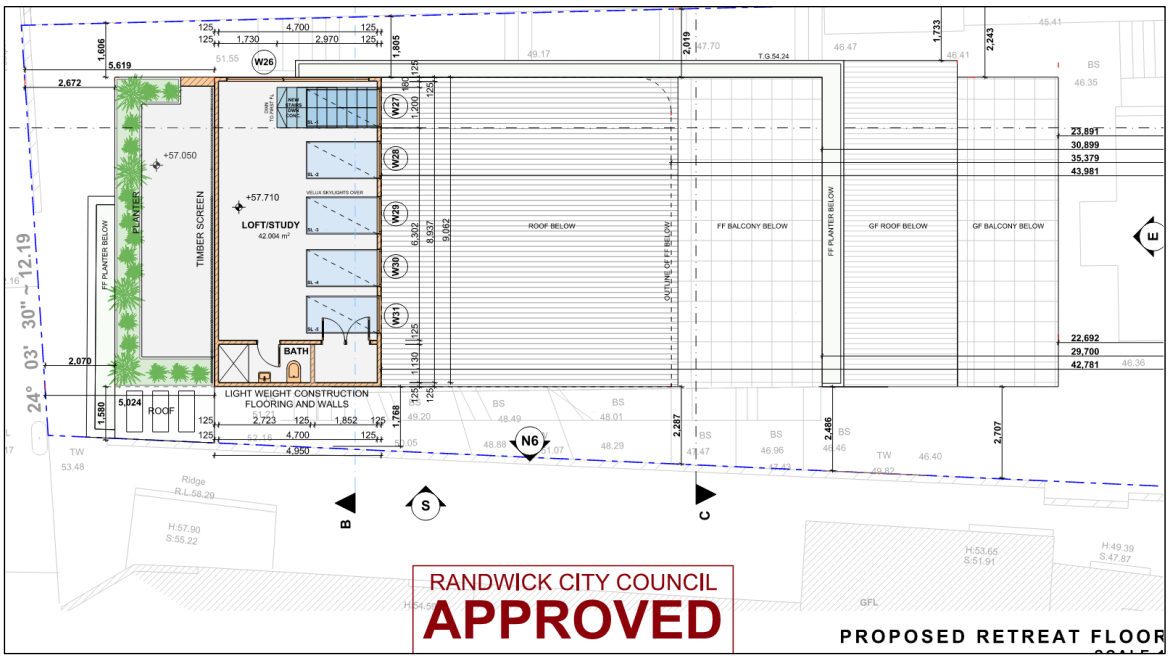


Figure 14 – DA/157/2021 approved loft/roof

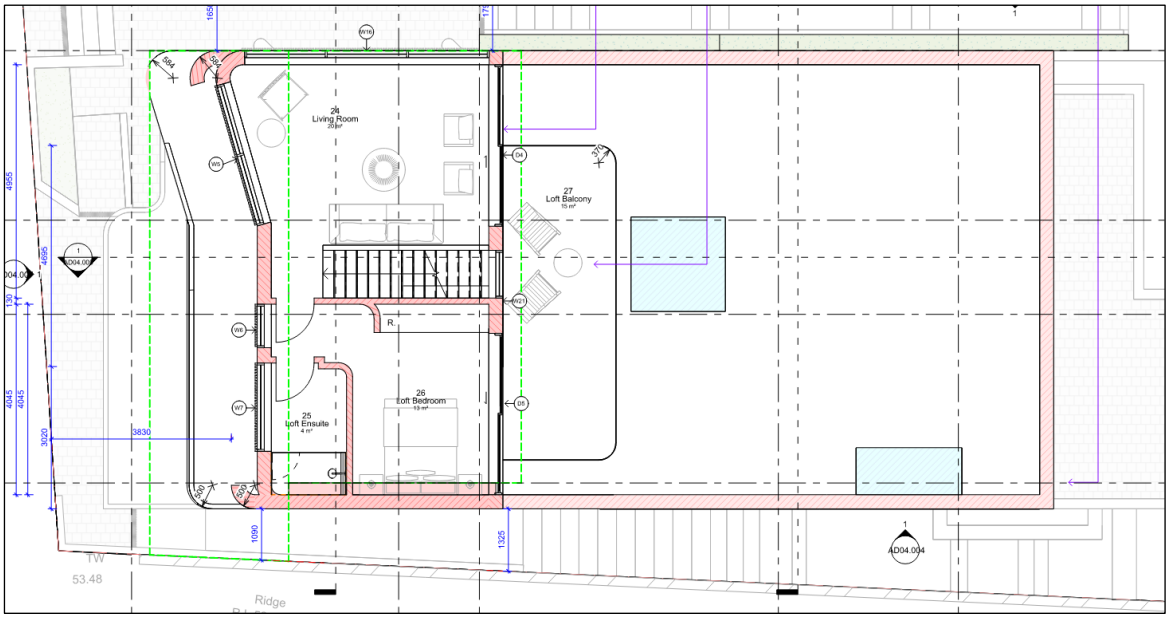


Figure 15 – Proposed loft/second floor plan Rev C – DA/258/2026

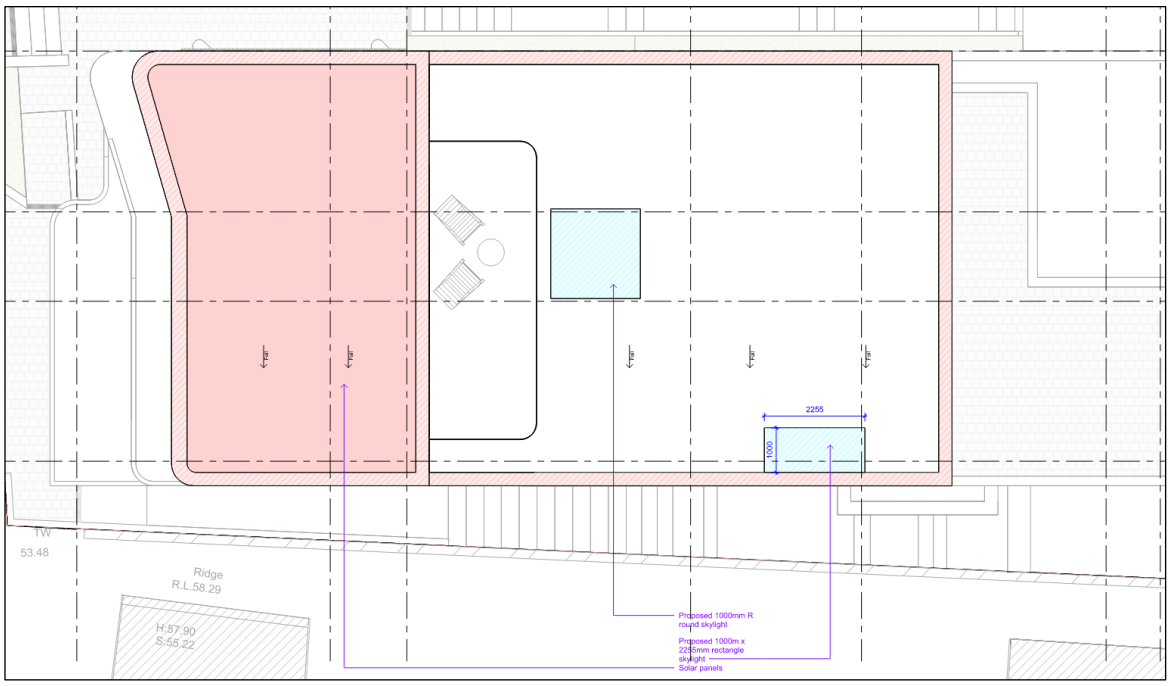


Figure 16 – Proposed roof plan Rev C – DA/258/2026

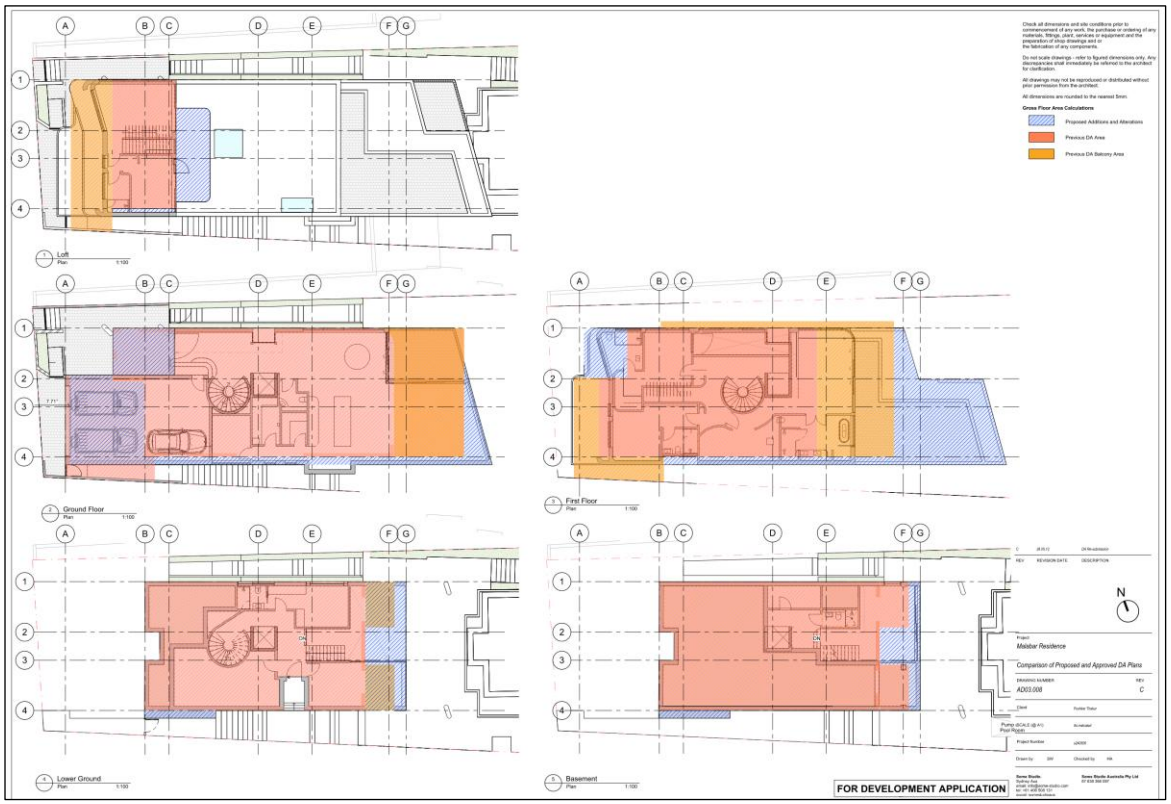


Figure 17 – DA/157/2021 and Application scope comparison – Rev C

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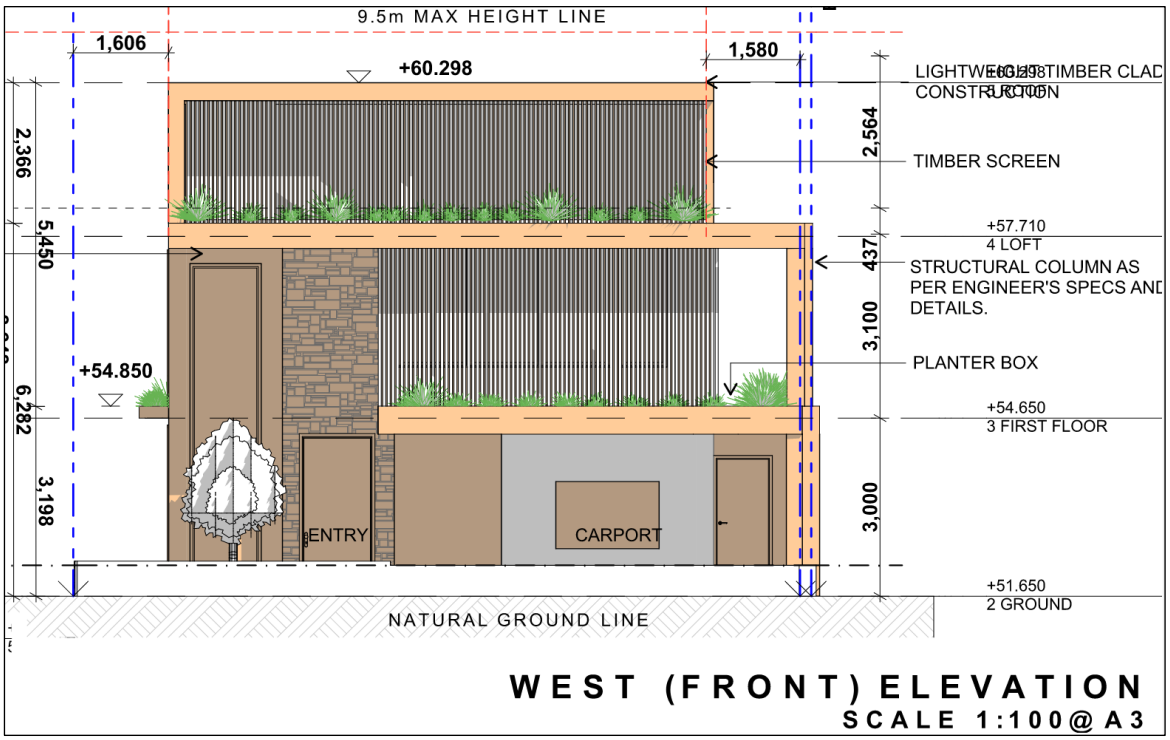


Figure 18 – DA/157/2021 approved western (street) elevation

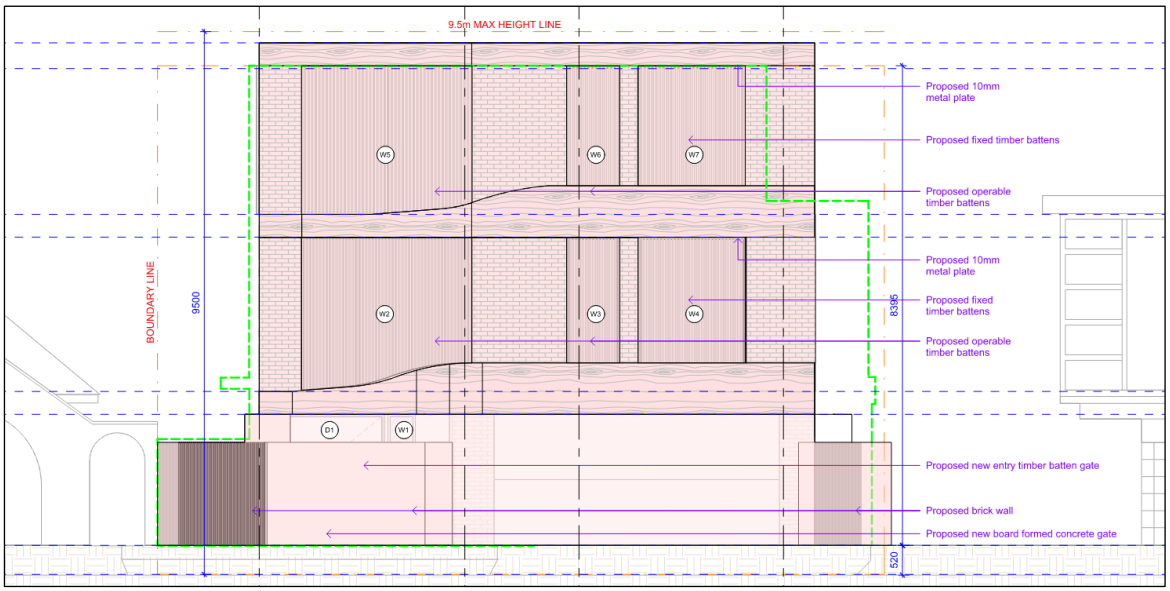


Figure 19 – Proposed west elevation - DA/258/2026 Rev C

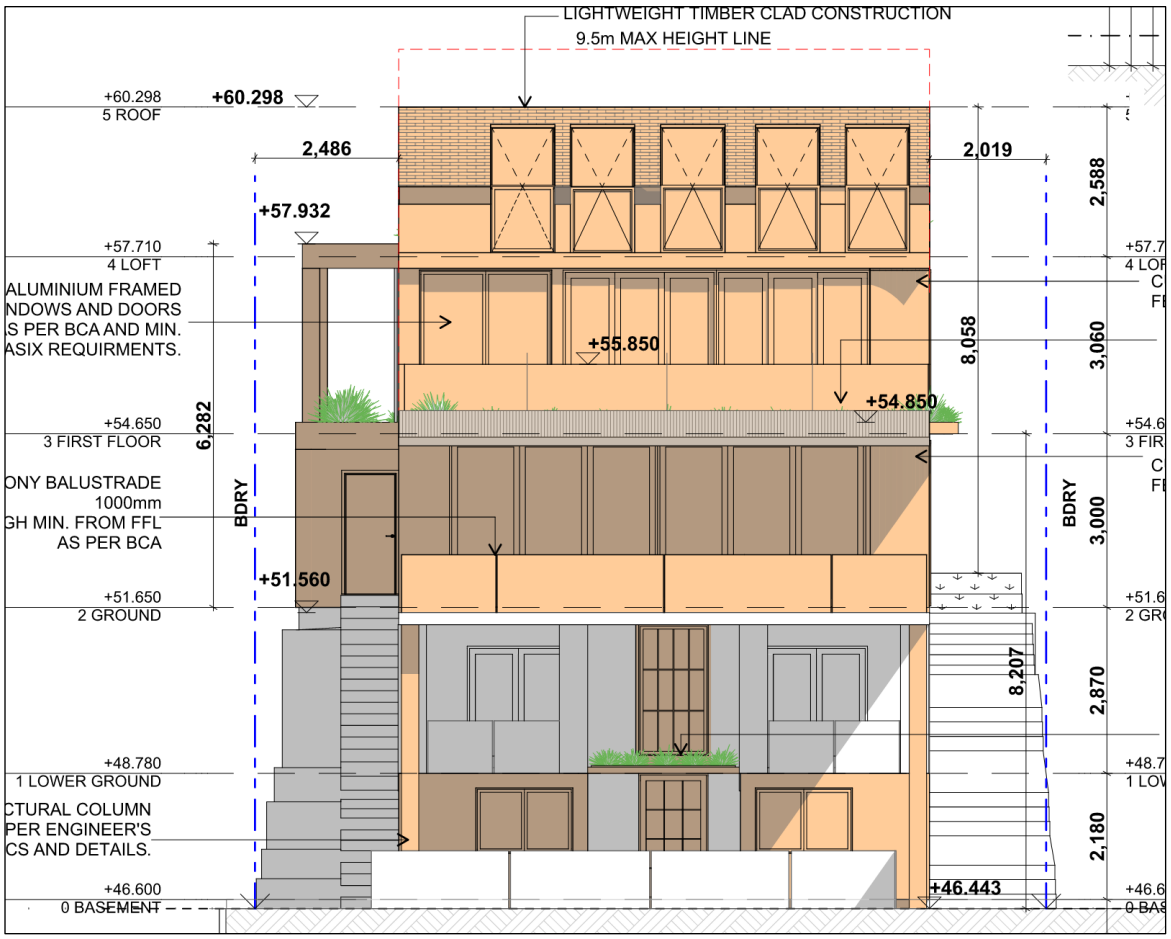


Figure 20 – DA/157/2021 approved south (rear) elevation

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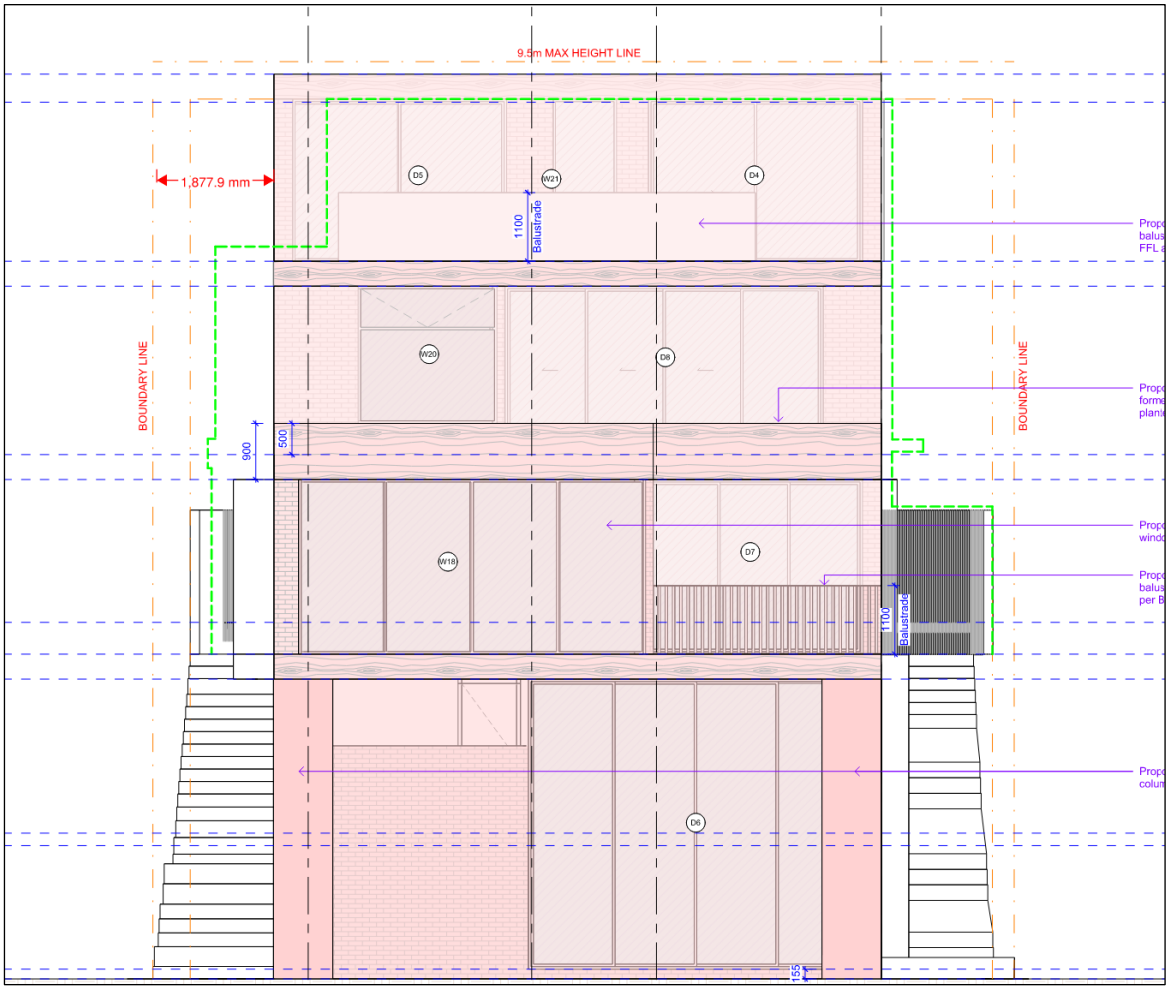


Figure 21 – Proposed rear elevation - DA/258/2026 Rev B

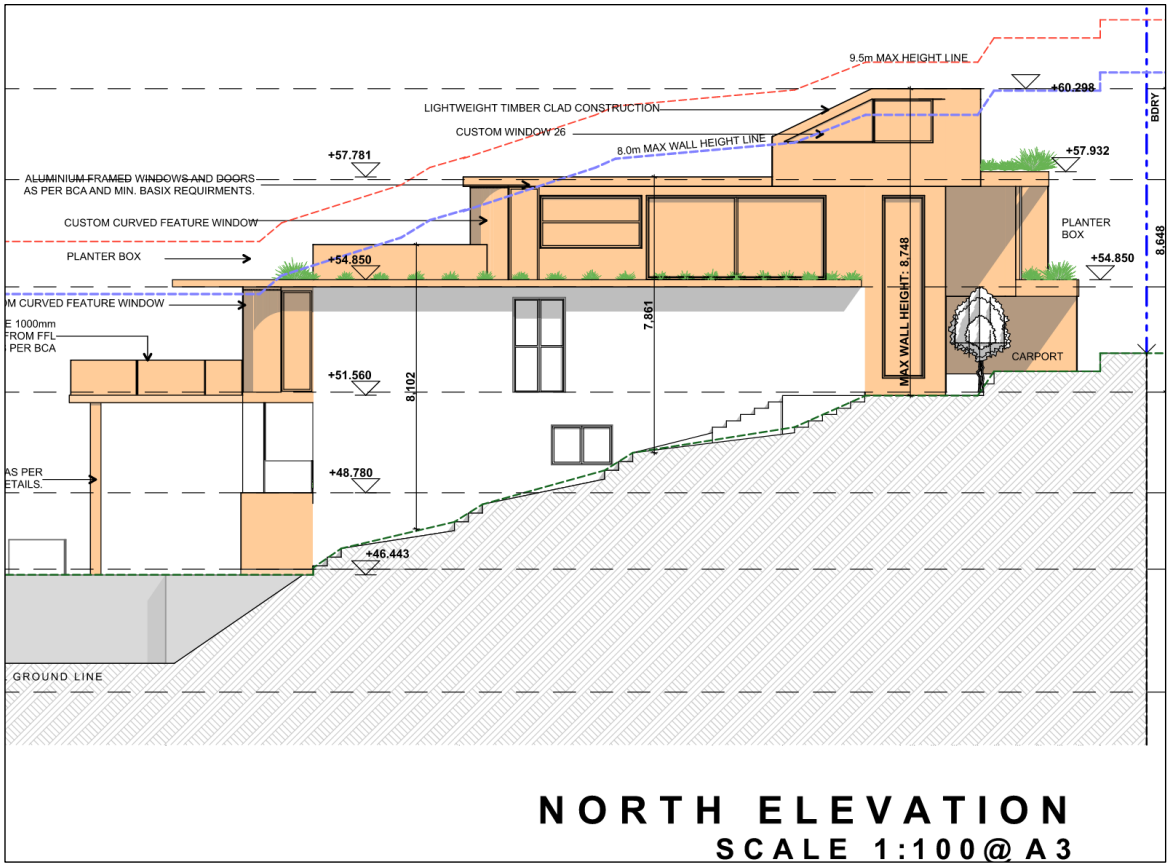


Figure 22 – DA/157/2021 approved north elevation

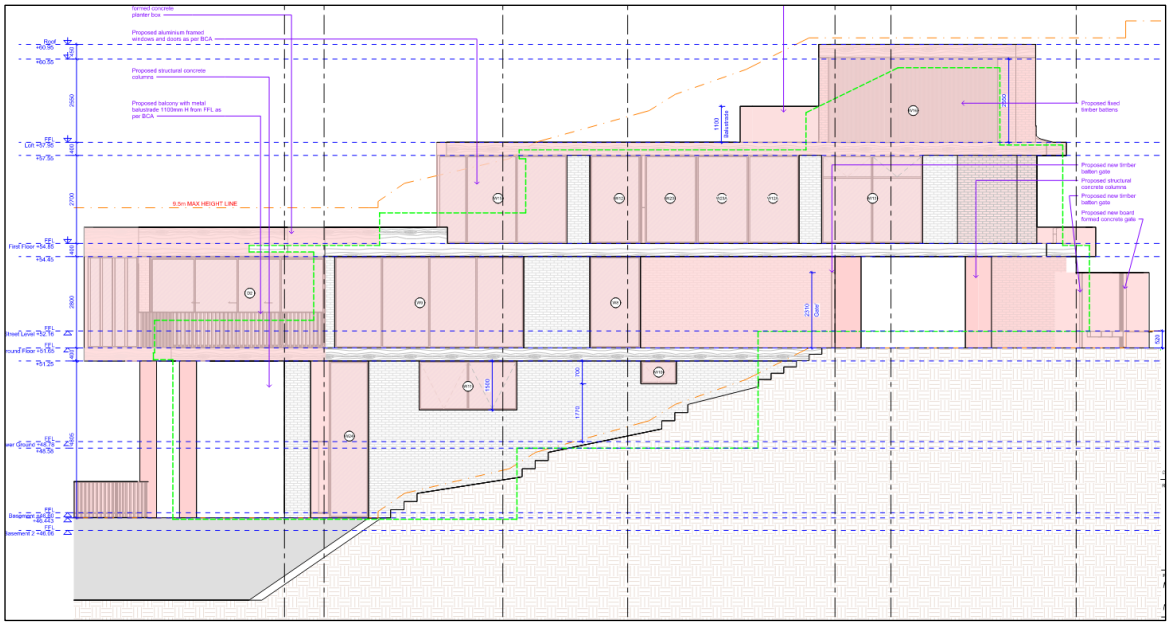


Figure 23 - – Proposed rear elevation - DA/258/2026 Rev C

4.1. Applicant Correspondence and Request for Information (*RFI)*

On 24/04/2026 Council provided correspondence to the Applicant requesting the Application be withdrawn due to the following identified issues;

- 55sqm additional gross floor area above the maximum permitted without a clause 4.6 request. Total FSR was incorrectly calculated;
- Exacerbation of three storey presentation;
- Insufficient deep soil permeable surfaces;

- Roof terrace;
- Insufficient articulation and privacy;
- Floor to ceiling side windows unacceptable – neighbouring windows not shown on floor plans;
- No landscaping plan or view analysis; and
- No clause 4.6 request for height breach – height was incorrectly calculated.

The Applicant that same day denied the withdrawal request and requested to meet with Council. An amended RFI was sent on 28/04/2026 and requested the following;

- FSR to comply;
- Building height to comply;
- Reduce three storey presentation by reducing loft level to those setbacks previously approved;
- Increase southern ground and first floor setbacks to begin at 1200mm;
- Provide an updated landscape plan;
- Provide compliant deep soil and canopy trees if site coverage will increase by more than 10%;
- Provide additional articulation via recessing;
- Provide privacy screen to balconies;
- Amend floor plans to display adjoining window locations so Council can assess side windows;
- Provide view models.

The roof terrace was noted to be retainable in the amended RFI. This position has been reconsidered by Council for the reasons identified within the DCP assessment under **Appendix 3**.

The Applicant on 19/05/2026 provided amended drawings. The items from the RFI were satisfied as follows:

- FSR to comply – Satisfied – Compliant scheme provided.

- Building height to comply – Clause 4.6 request provided – breach is predominantly the result of previous excavation.

- Reduce three storey presentation by reducing loft level to those setbacks previously approved – **Not Satisfied –** The Applicant has made no meaningful change to the exacerbation of three storey presentation. Conditioned to satisfaction.

- Increase southern ground and first floor setbacks to begin at 1200mm – Side setbacks unchanged – assessed under DCP/Key Issues.

- Provide an updated landscape plan – **Not satisfied** – previous concept plan 23/09/2025 resubmitted – See landscaping referral. Compliance conditioned.

- Provide compliant deep soil and canopy trees if site coverage will increase by more than 10% - **Not satisfied** – Site coverage increasing by more than 10% - deep soil and landscaping sought to be reduced – See DCP assessment/Landscaping referral – Compliance to be conditioned.

- Provide additional articulation via recessing – **Not satisfied** – See DCP assessment – conditioned for compliance.

- Provide privacy screen to balconies – **Not satisfied** – See DCP assessment – compliance to be conditioned.

- Amend floor plans to display side windows – Adjoining windows shown – Appropriateness of side elevation floor to ceiling windows assessed under DCP.

- Provide view models – **Not provided** – see key issues for view assessment.

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.

One submission was received from the adjoining dwelling at 303 Malabar Road, Maroubra.

Matter Raised	Comment / Consideration
1. Does not satisfy substantially the same development test.	1. Not a modification.
2. FSR is calculated incorrectly.	2. Amended per RFI.
3. Height is calculated incorrectly. Wall height non-compliance.	3. Amended per RFI. Wall height control does not apply under current DCP framework.
4. Setback noncompliance / inadequate justification.	4. See DCP / Key issues.
5. Privacy impacts.	5. See privacy assessment.
6. Shadow impacts.	6. See shadow assessment.
7. View loss concern and view loss diagram requested.	7. See view loss assessment.
8. FFLs to be shown on plans.	8. Conditioned to be consisted with elevation FFLs.
9. Wall height/hob should be shown on plans.	9. No wall height control. Height is shown on sections.
10. Height blanket diagram requested.	10. Council satisfied with information provided to assess height.
11. Solar eye diagrams required.	11. Elevation shadows previously provided. Satisfactory for amending DA.
12. Sight line assessment.	12. Council satisfied with the information provided to undertake privacy assessment.

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.

Council's Landscape Officer has reviewed the Application and confirmed support subject to conditions of consent. Council is accordingly satisfied that the considerations under Chapter 2 of the SEPP are satisfied.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

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

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

Chapter 4 - Remediation of Land

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

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

6.4. SEPP (Transport and Infrastructure) 2021

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

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

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

6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 low density residential under Randwick Local Environmental Plan 2012. Within that zone development for the purpose of a dwelling house 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)	9.5 Metres	11.55 Metres	No – see 4.6
Cl 4.4: Floor space ratio (max)	0.6: 1 (451.5sqm)	0.6: 1 (451.29sqm)	Yes

6.5.1. Clause 4.6 - Exceptions to development standards

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

6.5.2. Clause 6.7 Foreshore scenic protection area

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

The proposed development is generally consistent with the scale of surrounding development, which comprises predominantly low density dwellings. Views to and from the coast are satisfactorily retained, subject to the view assessment contained in this report. On this basis, the development is satisfactory with regard to clause 6.7 of RLEP 2012.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	9.5 Metres	11.55 Metres	2.05 Metres	21.5%

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

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

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

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

As part of the clause 4.6 reform the requirement to obtain the Planning Secretary's concurrence for a variation to a development standard was removed from the provisions of clause 4.6, and therefore the concurrence of the Planning Secretary is no longer required. Furthermore, clause 4.6 of the

Standard Instrument no longer requires the consent authority to be satisfied that the proposed development shall be in the public interest and consistent with the zone objectives as consideration of these matters are required under sections 4.15(1)(a) and (e) of the *Environmental Planning and Assessment Act 1979*, and clause 2.3 of RLEP 2012 accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

The applicant's written justification for the departure from the Height of Buildings (*HOB)* 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 HOB development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

   The objectives of the HOB standard are set out in Clause 4.3 (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

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

   (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 provides the following justification to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

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Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the maximum allowable height of buildings is unreasonable and unnecessary in the circumstances for the following reasons:

- The strict numerical non-compliance relates to a very small portion of the first-floor level comprising the master bedroom roof and walls (See figure 2).
- The non-compliance on this occasion can be directly attributed to the steeply sloping topography of the subject site and surrounds, which falls some 10m (or 19%) from the Malabar Road frontage to the rear.
- Notwithstanding the above, the end development will present as a three 3-storey development of compliant height and entirely in context with the surrounding streetscape, as indicted in the Figure 3 below.

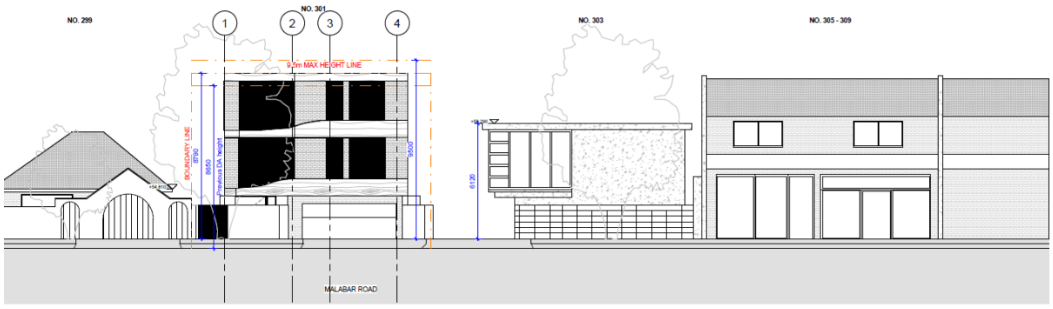


Figure 3: Streetscape (front) elevation showing 3-storey presentation compatible with immediate context on the eastern side of Malabar Road (Source: Architectural Drawings)

- The bulk and scale of the shop-top housing development within E1 – Local Centre Zone commencing on the lot one site removed to the south and dwelling houses to the west, are evidence of a mix of contemporary and traditional architectural styles that will ensure the overall presentation of the dwelling will be commensurate with or subordinate to the immediately surrounding built form, as is evident in the Plates 1-4 below:

- The amenity impacts associated with the strict numerically non-compliant components in respect of height, bulk and scale, solar access and overshadowing will be indiscernible from that associated with a compliant form of development.
- The considered form and massing of the end development, which includes a stepping of the built form to the rear and horizontal and vertical articulations, will effectively reduce the visual bulk of the end development as seen from the side and rear elevations.
- Notwithstanding the strict numerical departure from the development standard, the proposed development, inclusive of the minor non-compliant component, in this instance, will achieve the relevant objectives of the maximum Height of Buildings Standard, in that:
    - The size and scale of the dwelling will remain compatible with numerous substantial residential and shop top housing developments within the immediate locality, many of which present as 3 and 4 storey developments to surrounding vantage points, ensuring consistency with the desired future character of the locality.
    - The site is not in proximity to any heritage items or heritage conservation areas.
    - The visual bulk of the proposed development, inclusive of the strict numerically non-compliant components, will be indiscernible from that of a compliant form of development.
    - By way of the appropriate inclusion of privacy measures including offset and or high set windows and privacy screening as appropriate, in relation to surrounding dwellings, there will be no unsustainable loss of privacy to surrounding amenity.
    - Shadows cast by the non-compliant components of the development will fall largely on wall areas of the adjoining development to the south at No. 303 Malabar Road and not window openings. The proposed end development will maintain a minimum of 3 hours of direct sunlight between 8.00m and 4.00pm on 21 June, to north facing living area windows and private opens spaces of the renovated dwelling and the adjoining development at No. 303 Malabar

Road (see Figure 4 below). Compliance in this regard will not be adversely impacted by the strict numerically non-compliant components.



Figure 4: Shadow impacts on elevation in relation to immediately adjacent development to the south (No. 303 Malabar Road), showing minimal impacts on existing window openings associated with the proposed amending DA (Source: Architectural Drawings)

- Finally, the 'ground level existing' (taken for the purposes of the current DA) has resulted from extensive excavation by way of previous constructions, such that the pre-existing *'ground level existing'* would have been much higher than the measuring point taken for this application (to the underside of the basement slab). An extrapolated ground line, generally conveyed by the level of the footpaths, alongside the building, represents a more apparent ground line from surrounding viewpoints and an evident lesser departure from the standard.

VIEW LOSS ASSESSMENT

- The following assessment of view loss associated with the proposed development inclusive of non-compliant components, in accordance with the planning principle for view sharing as established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140,* has been provided below -

> *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.*

Views from surrounding properties that will be affected by the amending DA principally relate to those obtained from developments opposite the subject site, most notably at Nos. 250 to 254 Malabar Road, with current views including interrupted ocean views towards the Pacific Ocean. Views across the side boundaries of the subject site east north-east towards the Pacific Ocean are also available from the residential flat building to the south at No. 303 Malabar Road.

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.

Comment
In respect of the dwellings opposite the subject site, views from the properties on the western side of Malabar Road would be available from sitting and standing positions, primarily from east facing windows of living and bedroom areas rooms, as well as open balconies and elevated yard areas to the Malabar Road frontages. In respect of the residential flat building at No. 303 Malabar Road, views from seated and standing positions would be available from living and ancillary areas of those dwellings to the east north-east across the southern side boundary of the subject site (See figures 5-7 below). These views would also be available from 2 roof top terraces areas on that property approved under DA/118/2021.

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.

Comment
The extent of the impacts from properties opposite the subject site to the west are not expected to be significant as these dwellings are significantly elevated in relation those on the eastern side of Malabar Road.

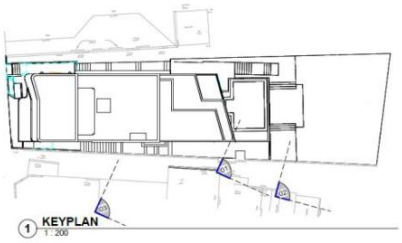
This is best demonstrated in the following image:

Importantly, no additional view loss would be generated by way of the strict numerically non-compliant components of the development, beyond those associated with the originally approved development under DA/157/2021.

Similarly, in respect of the development at No. 303 Malabar Road, there will be no additional impacts on views currently available from this property, associated with the strict numerically non-compliant components. This is effectively demonstrated in view loss photomontages showing the entire development, inclusive of the strict numerically non-compliant components which show little to no impact:



VIEW 1 - EXISTING



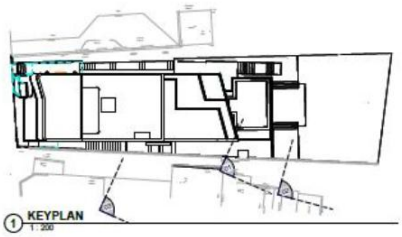


VIEW 1 - PROPOSED

Figure 5: Existing and proposed view of from the terrace area of the middle unit at No. 303 Malabar Road, showing minimal impacts associated with the proposed development (Source: Architectural Drawings and publicly available photos)



VIEW 2 - EXISTING





VIEW 2 - PROPOSED

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Figure 6: Existing and proposed view of from the rear terrace of No. 303 Malabar Road, showing no impacts associated with the proposed development (Source: Architectural Drawings and publicly available photos)



VIEW 3 - EXISTING



VIEW 3 - PROPOSED

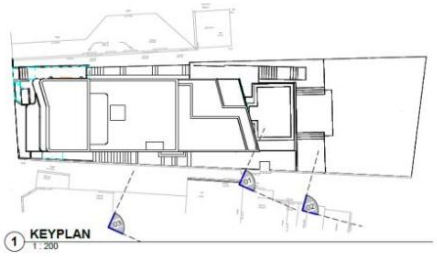


Figure 7: Existing and proposed view of from the rooftop terrace of the front unit at No. 303 Malabar Road, showing minimal impacts associated with the proposed development and no impact from the strict numerically non-compliant component (Source: Architectural Drawings and publicly available photos)

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.

Comment

- Properties opposite the subject side of Malabar Road:
  Given:
  - The significantly elevated nature of the ground floor levels of the respective dwellings.
  - The effective retention of views over and around the development as proposed in the amending DA.

The view loss is regarded as minor and to negligible and sustainable.

- Residential flat building at No. 303 Malabar Road:
  Due to:

- The extensive recessing of all proposed works well away from the rear boundary and well west of the building on that site.
- The sensitive location of the proposed development in relation to the existing living and ancillary area window openings and terraces on that property,

The view loss is regarded as minor to negligible and sustainable.

Finally, having due regard the distance from the coastline and the L&E Court's acknowledgement that there is no inalienable right to a view, the reasonable impact of the development as proposed in the amending DA is justified.

In the context of views currently obtained from all surrounding properties and those to be retained post construction to the proposed development, inclusive of the very minor strict numerical departure from the standard, it is considered that a reasonable sharing of views is achieved on this occasion, in accordance with the planning principle,.

- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Chief Justice Preston of the NSW Land and Environment Court in the case of in *Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most commonly invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the objectives of the Height of Buildings Standard are achieved on this occasion and the request for contravention of the Development standard is entirely justified and worthy of support.

Given the justification provided in this request, the remaining ways by which a Clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment
The underlying objectives are relevant and achieved on this occasion, despite the strict numerical non-compliance with the standard.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment
In this instance, the underlying objectives or purposes would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve on-site amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment
The abovementioned standard has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment
The zoning of the land on this occasion is not regarded as unreasonable or inappropriate.

As such, the request on this occasion satisfies more than one means of justifying contravention of the standard (one only required) and is manifestly worthy of support.

Assessing officer's comment:

The applicant's written request has adequately demonstrated that compliance with the HOB 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 HOB development standard as follows:

The environmental grounds which justify contravening the development standard
Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The proposed development is accompanied by a BASIX Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 with respect to energy use, water use and thermal performance, including that area relating to the strict numerical non-compliant components
- The materials and finishes used in the proposed works (inclusive of the non-compliant components) will be compatible with the streetscape and adjoining developments. Materials will be robust, energy efficient and recycled where possible.
- The environmental impacts associated with the strict numerically non-compliant components, including those relating to:
    - solar access and overshadowing,
    - bulk and scale
    - visual and acoustic privacy and
    - view loss,

are acceptable and within those envisaged under Council's DCP controls.

- The intensity of the development is commensurate with the capacity of the existing and planned infrastructure within the locality.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration with surrounding developments.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from maximum Height of Buildings Standard, the proposed variation is justified and there are sufficient environmental planning grounds to support the departure.

Consistency with Clause 4.6 of the RLEP
The objectives of Clause 4.6 are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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Consistency with Clause 4.6 of the RLEP
The objectives of Clause 4.6 are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this variation is well founded and worthy of support.

Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the Height of Building standard and the justified environmental planning grounds associated with the departure from the standard, have been demonstrated in this request.

The justification for the departure from the development standard is worthy of support.

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

Conclusion

Council is satisfied that the variation to the HOB standard is acceptable and notes it largely to result from previous excavation on a site with a significant slope.

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 HOB 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

View sharing

A view assessment consistent with Tenacity Consulting v Waringah [2004] NSWLEC 140 is provided below.

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 of the water and ocean to the horizon. Land water interface is not readily apparent.

Views are appropriately considered to be valuable.

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 concern are those obtained from the neighbouring 303 Malabar Road. That site is host to a strata subdivided multidwelling housing development containing three units. One of those units (unit 3) is sunken and does not have any views.

Views are accordingly assessed from unit 1 which is toward Malabar Road, and unit 2 which is toward the rear of the site and is above unit 3.

Unit 2 has two primary location from which views are obtained – this first being the rear living room where two side baclonies exist and a bedroom. Views from Unit 2 can be obtained in a variety of internal and external location in sitting and in standing positions.

Photos are provided below to illustrate views from unit 2.



Figure 24 – Unit 2 north facing view from rear balcony (source: Council staff)



Figure 25 – Unit 2 north facing view from side balcony (source: Council staff)



Figure 26 – Unit 2 side view toward 301 Malabar Road (source: Council staff)



Figure 27 – Unit 2 bedroom north facing view (source: Council staff)



Figure 28 – Unit 2 north-east facing view (source: Council staff)

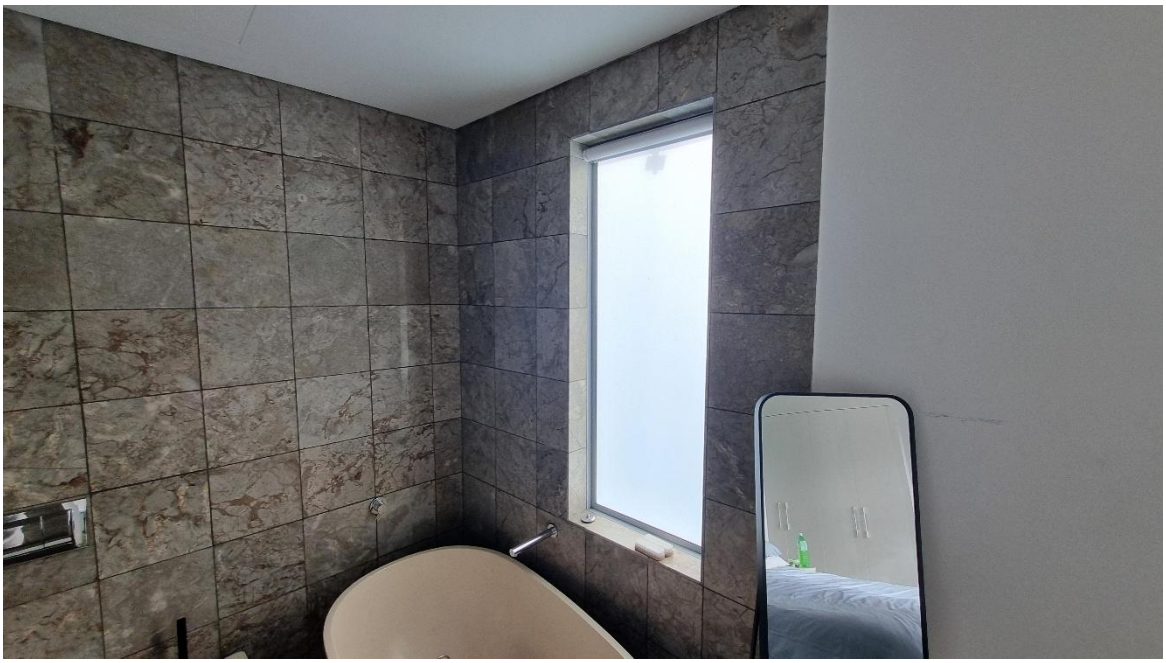


Figure 29 – Unit 2 existing bathroom window – frosted – no views obtained (source: Council staff)

Unit 1 has two primary location from which views are obtained – being an external terrace area which has an upper and lower portion as well as the living room which adjoings the upper portion of that terrace.

Distant water can views can be obtained obliquely from a bedroom of unit 1, however this is not considered to be a clear aspect.

Photos are provided below to illustrate views from unit 1.



Figure 30 – Unit 1 lower roof terrace view – largely obstructed as existing (source: Council staff)



Figure 31 – Unit 1 lower roof terrace view – largely obstructed as existing (source: Council staff)



Figure 32 – Unit 1 lower roof terrace view – inside existing pool (source: Council staff)



Figure 33 – Unit 1 existing bath windows adjoining staircase to lower terrace – frosted. (source: Council staff)



Figure 34 – Unit 1 bedroom view from window (source: Council staff)



Figure 35 – Unit 1 bedroom view from window (source: Council staff)



Figure 36 – Unit 1 view from upper terrace (source: Council staff)



Figure 37 – Unit 1 view from upper terrace (source: Council staff)

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.*

Unit 2

Views from unit 2's rear living space will be unaffected. The built form is not proposed to extend further than the existing pool.

Views from the window of unit 2 will be affected from its side as the built form of the extended ground floor. That window however is a corner aspect window and will still retain north-eastern water views.

Unit 1 – lower terrace

For unit 1, views from the lower terrace area as existing are minor and distant, not being the primary point from which unit 1 obtains its views. The extension of the ground floor is likely to partially affect this view.

The proposed first floor at 301 Malabar Road will align behind the existing ground floor of that dwelling and will not protrude back to the rear setback. The first floor addition is therefore not considered to attribute to any view loss from the lower terrace of unit 1.

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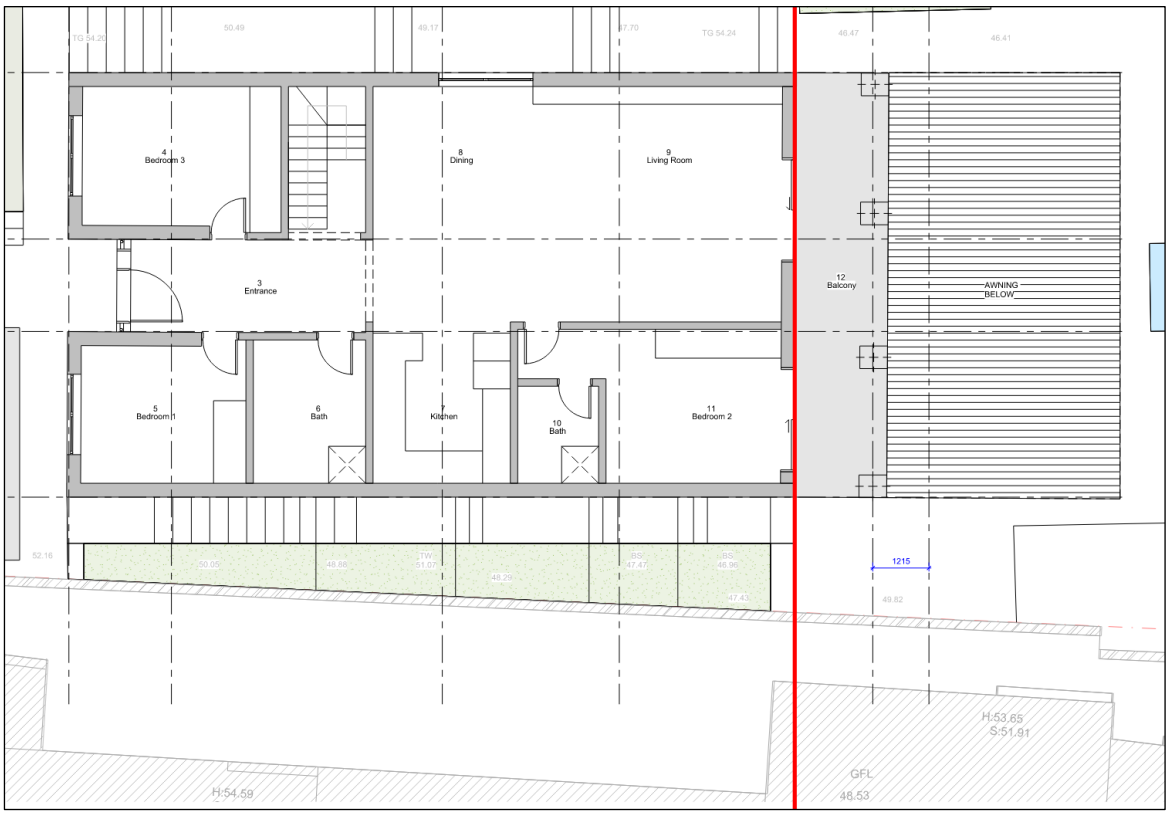


Figure 38 – Subject Site existing ground floor alignment with 303 Malabar.

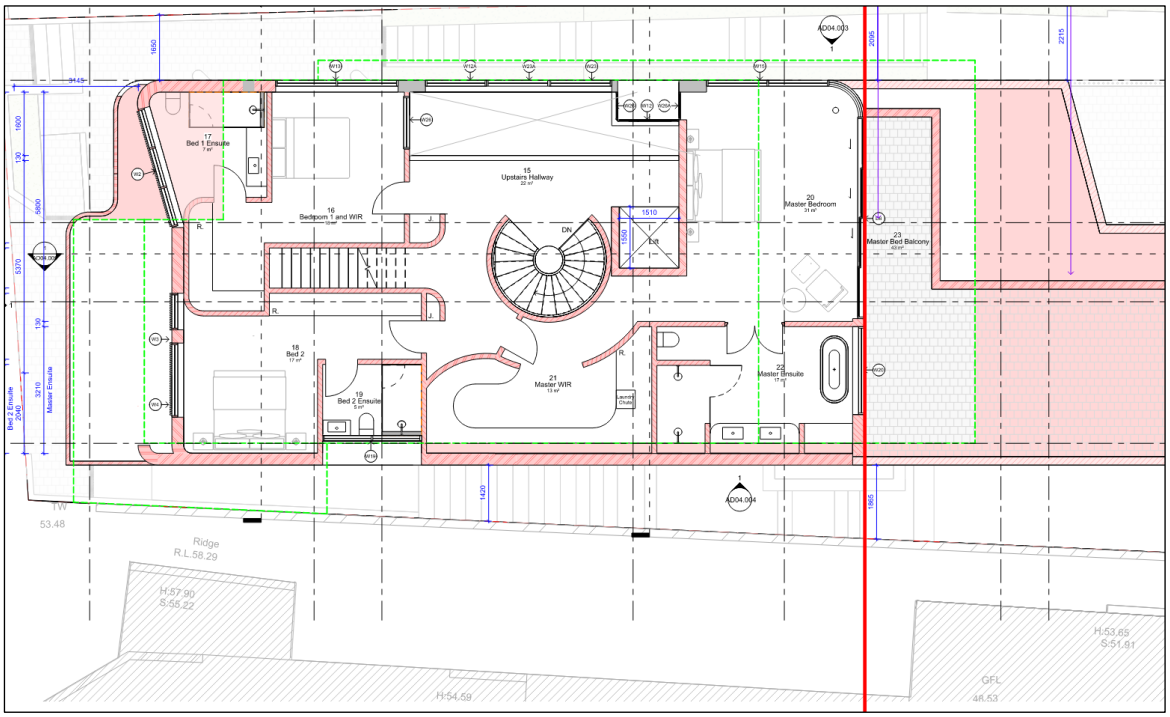


Figure 39 – Proposed first floor addition alignment (behind existing ground floor)



Figure 40 – View from 303 Malabar unit 1 lower terrace to existing ground floor of Subject Site. (source: Council staff)

Unit 1 - Upper terrace / living room

For the upper terrace area of unit 1, the same assessment which applies to the lower terrace can be applies here.

The extended ground floor is anticipated to have minimal to no impact on views to the water. The first floor will not extend further than the existing ground floor and will also have a minimal impact on views.

Unit 1 - Bedroom

Bedroom views of the water are a side, oblique view and not a primary aspect. Any potential water view from this area is likely to be lost.

View loss from unit 1 is considered to be minimal, with majority of existing views to be retained from the upper and lower terrace area as well as living room. Bedroom views are oblique side views and not a primary aspect.



Figure 41 – Unit 1 living room / upper terrace view (source: Council staff)



Figure 42 – Unit 1 upper terrace view (source: Council staff)

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 is considered reasonable when considering the size and topography of the Subject Site and the views in which it has retained.

The height breach which has occurred is predominantly the result of the sites significant slope and previous excavation. That additional height proposed through the first floor is considered to attribute minimal view loss.

Side setbacks proposed are appropriate and increase toward the rear of the site. FSR is further compliant, with site coverage being well below the maximum permissible.

Views in this instance are considered to be retained to an appropriate extent and the Application is supportable in this regard.

Side Setbacks

- Lower Ground Floor

Lower ground floor side setbacks are predominantly existing and not seen to be an issue. The extension proposed is greater than the minimum required.

- Ground Floor

The ground floor setback on the northern elevation is greater than the minimum provided. The southern side setback is sought to be increased from the previous approved nil setback to become 975mm. That 975mm doesn't comply, however the southern side boundary is irregular in that it tapers outward. Compliance with the side setback increases as the southern side boundary continues to the east.

One element of the ground floor side setback is not acceptable, being the southern protrusion which measures 1110mm to the boundary. That protrusion does not comply with the side setback requirement. It is to be set in via condition.

The ground floor side setbacks are otherwise suitable.

- First Floor

The first floor side setbacks are acceptable due to their increase as the side widens. The significant slope of the site makes full compliance of side setbacks difficult at the rear of the building, however, is seen to be acceptable as it continues an appropriate for with greater than required side setbacks.

- Second Floor / Loft

A diagram of indicative side setbacks is provided below for the street elevation. That diagram when compared to the existing approved second storey demonstrates increased non-compliance with the side setback controls. This is considered to further exacerbate the three storey presentation.

Conditions are accordingly imposed to reduce the second floor/loft side setbacks to those approved under DA/157/2021.

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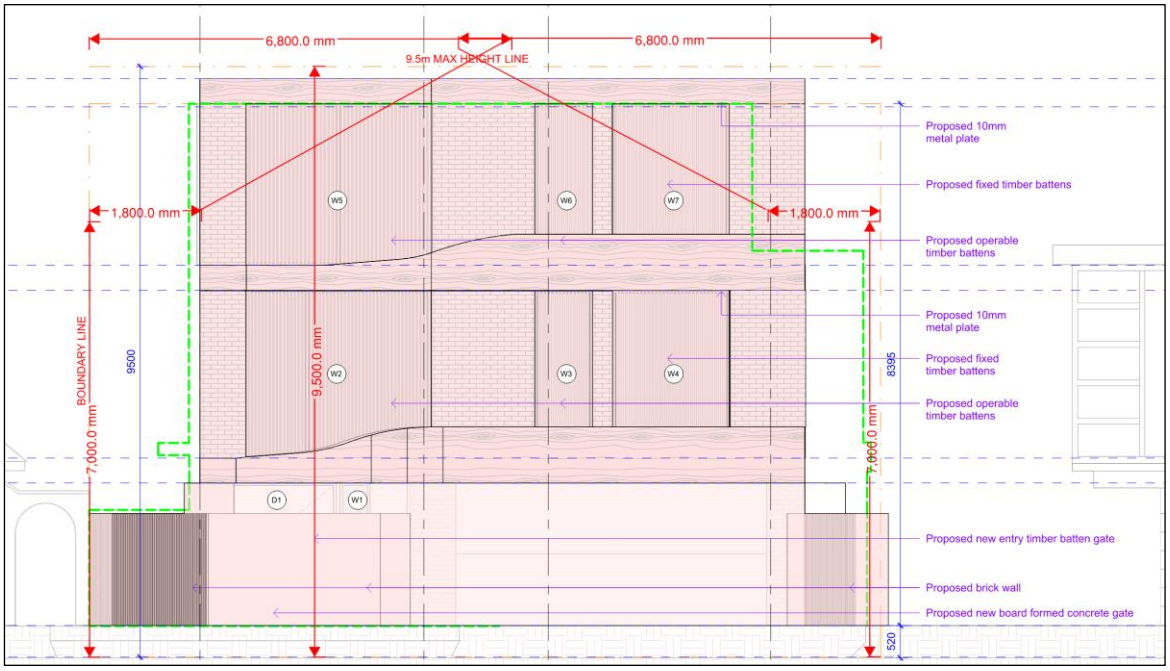


Figure 43 – Proposed side setback diagram – west/street elevation

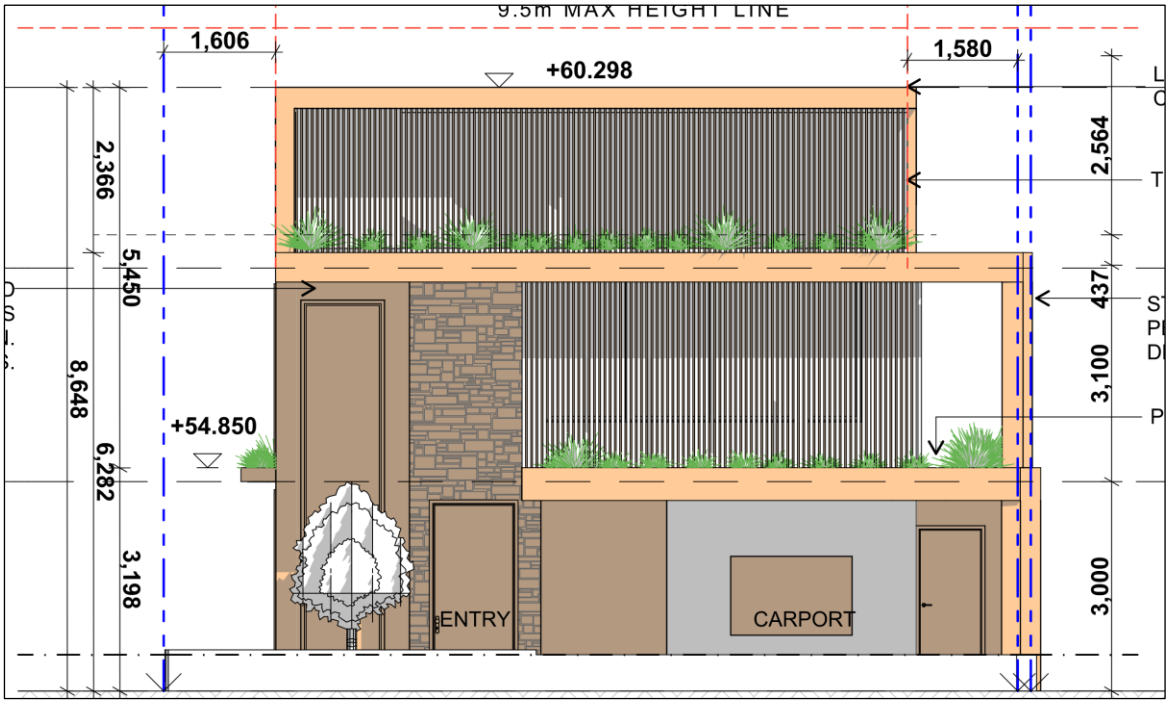


Figure 44 – Approved west/street elevation

10. Conclusion

That the application for "*amendments to development consent for DA/157/2021 including reconfiguration of the internal layout of the dwelling with new lift, conversion of attached carport to garage, new balcony at loft level, changes to pool deck and alterations to structural columns at basement and lower ground floor levels*" be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone.

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

- The development enhances the visual quality of the public domain/streetscape.

- The Application satisfies the considerations under Clause 4.6 (3) of Randwick Local Environmental Plan 2013 to vary the Height of Building Development Standard under Clause 4.3 of that same instrument.

The following non standard conditions are recommended.

2. Amendment of Plans and Documentation

The approved plans and documents under Condition 1 must be amended in accordance with the requirements below.

Amended documents must be provided to and approved by Council's Manager Development Assessment prior to the issue of any construction certificate.

a) The second floor / loft level must be amended to return the front and southern side setbacks to those setbacks approved under DA/157/2021. Internal reconfiguration of the loft level to facilitate this change is permitted.

b) The southern elevation is to be amended as follows:

i. Additional materiality must be introduced on the southern elevation to break up the extensive brickwork. The approved finishes schedule may be updated to include new materials to facilitate this;

ii. The southern ground floor protrusion which measures 1110mm to that southern side boundary must be set back in to align with the remainder southern wall;

iii. A physical recess in the ground floor southern elevation must be provided, similar to that in the approved for the first floor adjoining the bed 2 ensuite.

c) The first floor balcony must be reduced so that it measures no further than 1900mm from the external wall of the first floor master bedroom.

d) The northern elevation of the ground floor balcony must be amended to provide a privacy screen 1800mm high from FFL 51.65.

e) The following windows must be amended to provide privacy treatment:

i. Lower Ground Floor:
- *Window W11.*

ii. Ground Floor;
- *Window W8, W9, and W17.*

iii. First Floor
- *Windows W12, W12A, W13, W15, W23, W23A.*

One following privacy treatments must be selected and applied to any window. Different treatments may be applies to differed windows.

1. *Sil height of 1600mm from their respective FFL;*
2. *Sandblasted, frosted, or opaque glazing up to 1600mm from their respective FFL; or*
3. *Privacy screens beginning at the respective FFL, constructed with either:*
   - *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.*

f) The pool and pump room under the new deck must be within an acoustic enclosure. The approved drawings must indicate this, and subsequent construction certificate drawings must provide specifications for the acoustic enclosure.

g) An additional north and south elevation drawings must be provided which provides the height of the walls approved up to the adjoining north and south boundaries.

h) All floor plans must be amended to provide FFL levels consistent with the approved elevations.

i) The loft balcony must be deleted.

The above changes must be clouded and lettered in amended drawings submitted for Council's review.

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

3. Compliance with conditions approved by DA/157/2021

Except where modified by this consent, including superseding of condition 1 in DA/157/2021, the development must be carried out in conjunction with the development approved under development consents DA/157/2021 including any associated modification applications.

All conditions of consent imposed on Development Consent No DA/157/2021 are to be read in conjunction with this development consent, and the Applicant must comply with the conditions of Development Consent No DA/157/2021 in carrying out the development approved pursuant to this development consent.

Notwithstanding the above, 7.12 contributions under Condition 5 of DA/157/2021 are still applicable and not superseded by this consent. To avoid doubt, 7.12 contributions under both DA/157/2021 and DA/258/2026 must be paid prior to the issue of a construction certificate.

Condition Reason: To ensure any requirements under DA/371/2019 and DA/371/2019/A are retained inclusive of the amending components of this DA and are included in the Construction Certificate documentation.

4. Modification to DA/157/2021

Prior to the commencement of the development approved by this consent, the development consent granted to Development Consent No. DA/157/2021 shall be modified pursuant to Section 4.17(1)(b) and (c) of the Environmental Planning and Assessment Act 1979 as detailed below:

- *Condition 2 of DA/157/2021 is to be deleted.*

Condition Reason: To ensure consistency between DA/157/2021 and the amending components of this DA.

26. Landscape Plans

The Adopted Landscape Plan S4.55 Concept Landscape Plans by ISC Design dated 23/9/2025 must be amended to now include the following requirements:

a) Minimum of 25% of front setback area must planted out and comprise deep soil permeable surfaces, to which, additional larger species must be planted within northwestern frontage, this will soften the frontage to the streetscape, taller screening species must be applied (not bamboo) within balconies, to also soften the frontage to streetscape.

b) 45% of the Subject Site must comprise deep soil permeable surfaces. Variation to this amount is at the discretion of Council's Manager Development Assessment.

c) Elevated planting is to be reintroduced into the first floor and second floor front setbacks, similar to that approved under DA/157/2021.

d) Native species. The plant schedule must meet the minimum 60% native species target, to comply with control

e) Canopy cover amounting to a minimum 25% of the total site area must be achieved, planting of two additional species within the rear, which must attain a mature height of around 6 metres, no fruiting species, nor Palms to be applied

If total quantity of 4 canopy trees cannot be provided within the site, to comply with DCP controls, additional tree/s will be planted elsewhere in the LGA at applicant's costs.

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Appendix 1: Referrals

1. External referral comments:

1.1. Ausgrid

Ausgrid

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

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

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

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

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

Ausgrid Underground Cables are in the vicinity of the development.

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

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

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

SafeWork Australia – Excavation Code of Practice.

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

The following points should also be taken into consideration.

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

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

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

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

2. Internal referral comments:

2.1. Development Engineering and Landscaping

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

Garage Comments
The approved carport/garage has been lengthened internally to accommodate additional vehicles as part of this amending DA. A minimum of 3 spaces are now provided which is in excess of the minimum two spaces required under the DCP. No objections are raised.

The position of the vehicle crossing will generally not change and the existing engineering conditions provided for DA/157/2021 will be able to accommodate the proposed changes to the carport. The conditions in this report have been based on those conditions in DA/157/2021.

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) *To a suitably sized infiltration area.*

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.*

Landscape Comments
Site Inspection was undertaken on Friday 8th May 2026 which also was undertaken through google street view and near map aerial photography with photos of all vegetation found at D06082988 & D06065201.

Within Maroubra Road council verge, north of mains power pole, mature Banksia Serrata (Saw Toothed Banksia) 5.5 metres high, in good condition and health, under power lines, pruned by power company contractors, in close conflict with works, to be protected against physical and mechanical injuries.

Moving within frontage of property, the only vegetation was small and insignificant which can be removed at any time, moving down southern side setback, halfway down external staircase, small insignificant Yucca species, which also can be removed at any time.

The established Macadamia serratifolia (Macadamia) tree within northeastern rear was observed to assist with amenity and privacy for both this site and adjoining neighbours, being shown for

retention on the Landscape Plan, is not directly affected by the works in this application in anyway, to be protected against mechanical and physical injuries.

Moving wholly within southern No.303 rear property, mature significant Fig tree which protrudes within the subject site, same situation described above, not directly affected by works in this application in anyway will be protected against mechanical and physical injuries within the neigbouring property.

Moving wholly within eastern No.26 rear setback, two small species of Jacaranda and a Palm, not directly affected by the works in anyway will be protected within neighbouring property.

Moving wholly within northern No.299 rear side setback, Camelia species & Murraya species, both are not directly affected by the works in anyway, some pruning may be applied to Murraya species as there is slight protrusion within subject site, to be protected within neighbouring property.

An assessment against the C1 DCP 2023 controls with a site area of 601sqm or above revealed that compliance is achieved with:

Clause 2.5: Site coverage/deep soil ***does increase site coverage by more than 10%.***

Deficiencies required to Landscape Plans to achieve compliance:

a) *Scheme which provides compliant deep soil permeable surfaces to be provided, being 45%;*

b) *Planting to be reintroduced to the balcony areas within the front setback;*

c) *Minimum of 25% of front setback area must planted out and comprise deep soil permeable surfaces, to which, additional larger species must be planted to within northwestern frontage, to soften the frontage to the streetscape, taller screening species (not bamboo) within balconies to also soften the frontage.*

d) *Native species. The plant schedule must meet the minimum 60% native species target, to comply with controls*

e) *Canopy cover amounting to a minimum 25% of the total site area must be achieved, planting of two additional species within the rear, which must attain a mature height of around 6metres, no fruiting species, nor Palms to be applied*

   If total quantity of 4 canopy trees cannot be provided within the site, to comply with DCP controls, additional tree/s will be planted elsewhere in the LGA at applicants costs.

   The cost of the street planting fee which includes the planting, staking, mulching, watering, general pruning care for the life of the tree, can be found on https://www.randwick.nsw.gov.au/__data/assets/pdf_file/0004/345469/Technical-Services-and-Domestic-Waste.pdf (Clause Part 2.6, point ii) of the C1 DCP, fee structure is found in our Councils website, Fees & Charges, Technical Services, Street Trees (page 4, Street Tree Planting Fee = $1,765.00)"

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

D41/26

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LIAISON – LAND USE APPRAISALS – EXEMPT AND COMPLYING DEVELOPMENT CHECKS – STATEMENTS OF ENVIRONMENTAL EFFECTS – ENVIRONMENTAL IMPACT STATEMENTS – PLANNING PROPOSALS – L5.fjf AND & ENVIRONMENT COURT REPRESENTATION

Clause 4.6 Request for Contravention of the Development Standard to Maximum Height of Building under Clause 4.3 (2) of the Randwick Local Environmental Plan 2012 And View Loss Analysis

In relation to

Proposed Amending DA in relation to Consent DA/157/2021
for alterations and additions to existing dwelling

at

Lot 26 DP 12218 No. 301 Malabar Road

Maroubra

Prepared for

Mr. Pushkar Thakur

May 2026

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RANDWICK LOCAL ENVIRONMENTAL PLAN 2012 (RLEP)
CLAUSE 4.6
REQUEST FOR CONTRAVENTION OF DEVELOPMENT STANDARD

APPLICANT: Mr. Pushkar Thakur
ADDRESS: Lot 26 DP 12218 No. 301 Malabar Road, Maroubra
PROPOSAL: Proposed amending DA in relation to Consent DA/157/2021 for alterations and additions to existing dwelling

DEVELOPMENT STANDARD:
Maximum Height of Building under Clause 4.3 (2) of the RLEP.

INTRODUCTION
This submission is a Request for Contravention of the above Development Standard in relation to Proposed amending DA in relation to Consent DA/157/2021 for alterations and additions to existing dwelling, at Lot 26 DP 12218 No. 301 Malabar Road, Maroubra, on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. The proposal achieves the objectives of Clause 4.6 of the RLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The development standard to which the request relates
Clause 4.3(2) states:

(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.

The corresponding map identifies a maximum height of buildings of 9.5m, as detailed in the following extract from Council's mapping:

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Figure 1: Maximum height of buildings in respect of the subject site (Source: RLEP Height of Buildings Map)

The objectives of the development standard

The objectives of the development standard, as stipulated under Clause 4.3 of the RLEP, are:

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

The nature of the departure from the development standard

The proposed development will have a maximum building height of 11.55m, equating to a strict numerical departure of 2.05m or 21.58% from the standard.

The extent of the departure is demonstrated in the images below:



Figure 2: North Elevation showing maximum height of proposed development and minor strict numerical departure (outlined in green) (Source: Architectural Drawings)

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Compliance with the maximum allowable height of buildings is unreasonable and unnecessary in the circumstances for the following reasons:

- The strict numerical non-compliance relates to a very small portion of the first-floor level comprising the master bedroom roof and walls (See figure 2).
- The non-compliance on this occasion can be directly attributed to the steeply sloping topography of the subject site and surrounds, which falls some 10m (or 19%) from the Malabar Road frontage to the rear.
- Notwithstanding the above, the end development will present as a three 3-storey development of compliant height and entirely in context with the surrounding streetscape, as indicted in the Figure 3 below.

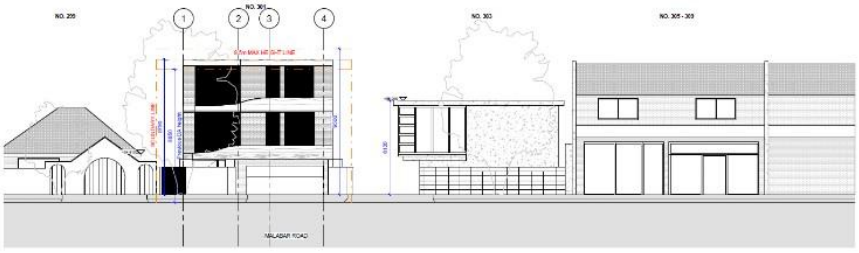


Figure 3: Streetscape (front) elevation showing 3-storey presentation compatible with immediate context on the eastern side of Malabar Road (Source: Architectural Drawings)

- The bulk and scale of the shop-top housing development within E1 – Local Centre Zone commencing on the lot one site removed to the south and dwelling houses to the west, are evidence of a mix of contemporary and traditional architectural styles that will ensure the overall presentation of the dwelling will be commensurate with or subordinate to the immediately surrounding built form, as is evident in the Plates 1-4 below:

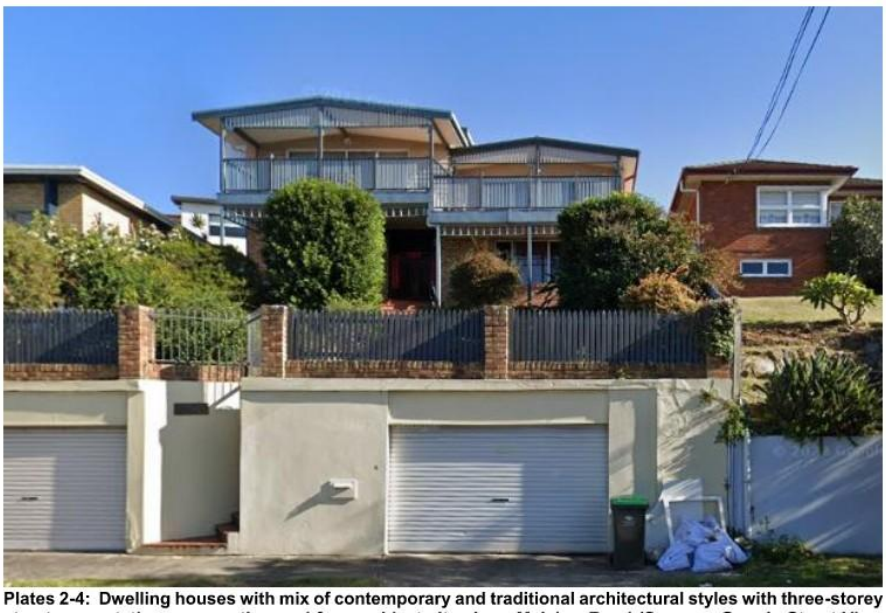
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Plate 1: Shop-top housing development within E1 – Local Centre Zone commencing on the lot one site removed to the south of subject site (Source: Google Street View Imagery)







Plates 2-4: Dwelling houses with mix of contemporary and traditional architectural styles with three-storey street presentations across the road from subject site along Malabar Road (Source: Google Street View Imagery)

- The amenity impacts associated with the strict numerically non-compliant components in respect of height, bulk and scale, solar access and overshadowing will be indiscernible from that associated with a compliant form of development.
- The considered form and massing of the end development, which includes a stepping of the built form to the rear and horizontal and vertical articulations, will effectively reduce the visual bulk of the end development as seen from the side and rear elevations.
- Notwithstanding the strict numerical departure from the development standard, the proposed development, inclusive of the minor non-compliant component, in this instance, will achieve the relevant objectives of the maximum Height of Buildings Standard, in that:
    - The size and scale of the dwelling will remain compatible with numerous substantial residential and shop top housing developments within the immediate locality, many of which present as 3 and 4 storey developments to surrounding vantage points, ensuring consistency with the desired future character of the locality.
    - The site is not in proximity to any heritage items or heritage conservation areas.
    - The visual bulk of the proposed development, inclusive of the strict numerically non-compliant components, will be indiscernible from that of a compliant form of development.
    - By way of the appropriate inclusion of privacy measures including offset and or high set windows and privacy screening as appropriate, in relation to surrounding dwellings, there will be no unsustainable loss of privacy to surrounding amenity.
    - Shadows cast by the non-compliant components of the development will fall largely on wall areas of the adjoining development to the south at No. 303 Malabar Road and not window openings. The proposed end development will maintain a minimum of 3 hours of direct sunlight between 8.00m and 4.00pm on 21 June, to north facing living area windows and private opens spaces of the renovated dwelling and the adjoining development at No. 303 Malabar

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Road (see Figure 4 below). Compliance in this regard will not be adversely impacted by the strict numerically non-compliant components.



Figure 4: Shadow impacts on elevation in relation to immediately adjacent development to the south (No. 303 Malabar Road), showing minimal impacts on existing window openings associated with the proposed amending DA (Source: Architectural Drawings)

- Finally, the 'ground level existing' (taken for the purposes of the current DA) has resulted from extensive excavation by way of previous constructions, such that the pre-existing *'ground level existing'* would have been much higher than the measuring point taken for this application (to the underside of the basement slab). An extrapolated ground line, generally conveyed by the level of the footpaths, alongside the building, represents a more apparent ground line from surrounding viewpoints and an evident lesser departure from the standard.

VIEW LOSS ASSESSMENT

- The following assessment of view loss associated with the proposed development inclusive of non-compliant components, in accordance with the planning principle for view sharing as established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140,* has been provided below -

  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.

  Comment

Views from surrounding properties that will be affected by the amending DA principally relate to those obtained from developments opposite the subject site, most notably at Nos. 250 to 254 Malabar Road, with current views including interrupted ocean views towards the Pacific Ocean. Views across the side boundaries of the subject site east north-east towards the Pacific Ocean are also available from the residential flat building to the south at No. 303 Malabar Road.

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.

Comment
In respect of the dwellings opposite the subject site, views from the properties on the western side of Malabar Road would be available from sitting and standing positions, primarily from east facing windows of living and bedroom areas rooms, as well as open balconies and elevated yard areas to the Malabar Road frontages. In respect of the residential flat building at No. 303 Malabar Road, views from seated and standing positions would be available from living and ancillary areas of those dwellings to the east north-east across the southern side boundary of the subject site (See figures 5-7 below). These views would also be available from 2 roof top terraces areas on that property approved under DA/118/2021.

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.

Comment
The extent of the impacts from properties opposite the subject site to the west are not expected to be significant as these dwellings are significantly elevated in relation those on the eastern side of Malabar Road.

This is best demonstrated in the following image:

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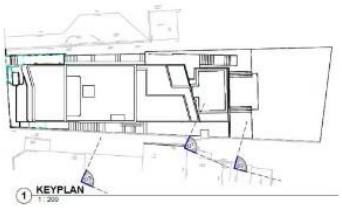
Plate 5: Street view showing elevated siting of dwellings opposite subject site along Malabar Road (Source: Google Street View Imagery)

Importantly, no additional view loss would be generated by way of the strict numerically non-compliant components of the development, beyond those associated with the originally approved development under DA/157/2021.

Similarly, in respect of the development at No. 303 Malabar Road, there will be no additional impacts on views currently available from this property, associated with the strict numerically non-compliant components. This is effectively demonstrated in view loss photomontages showing the entire development, inclusive of the strict numerically non-compliant components which show little to no impact:



VIEW 1 - EXISTING



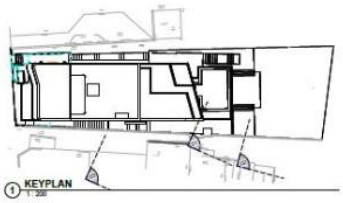


VIEW 1 - PROPOSED

Figure 5: Existing and proposed view of from the terrace area of the middle unit at No. 303 Malabar Road, showing minimal impacts associated with the proposed development (Source: Architectural Drawings and publicly available photos)



VIEW 2 - EXISTING





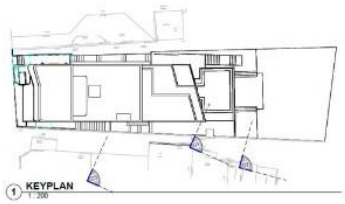
VIEW 2 - PROPOSED

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Figure 6: Existing and proposed view of from the rear terrace of No. 303 Malabar Road, showing no impacts associated with the proposed development (Source: Architectural Drawings and publicly available photos)



VIEW 3 - EXISTING





VIEW 3 - PROPOSED

Figure 7: Existing and proposed view of from the rooftop terrace of the front unit at No. 303 Malabar Road, showing minimal impacts associated with the proposed development and no impact from the strict numerically non-compliant component (Source: Architectural Drawings and publicly available photos)

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.

Comment

- Properties opposite the subject side of Malabar Road:
  Given:
  - The significantly elevated nature of the ground floor levels of the respective dwellings.
  - The effective retention of views over and around the development as proposed in the amending DA.

The view loss is regarded as minor and to negligible and sustainable.

- Residential flat building at No. 303 Malabar Road:
  Due to:

- The extensive recessing of all proposed works well away from the rear boundary and well west of the building on that site.
- The sensitive location of the proposed development in relation to the existing living and ancillary area window openings and terraces on that property,

The view loss is regarded as minor to negligible and sustainable.

Finally, having due regard the distance from the coastline and the L&E Court's acknowledgement that there is no inalienable right to a view, the reasonable impact of the development as proposed in the amending DA is justified.

In the context of views currently obtained from all surrounding properties and those to be retained post construction to the proposed development, inclusive of the very minor strict numerical departure from the standard, it is considered that a reasonable sharing of views is achieved on this occasion, in accordance with the planning principle,.

- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Chief Justice Preston of the NSW Land and Environment Court in the case of in *Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most commonly invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the objectives of the Height of Buildings Standard are achieved on this occasion and the request for contravention of the Development standard is entirely justified and worthy of support.

Given the justification provided in this request, the remaining ways by which a Clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment
The underlying objectives are relevant and achieved on this occasion, despite the strict numerical non-compliance with the standard.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment
In this instance, the underlying objectives or purposes would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve on-site amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

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- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment
The abovementioned standard has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment
The zoning of the land on this occasion is not regarded as unreasonable or inappropriate.

As such, the request on this occasion satisfies more than one means of justifying contravention of the standard (one only required) and is manifestly worthy of support.

The environmental grounds which justify contravening the development standard
Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The proposed development is accompanied by a BASIX Certificate which conforms to the requirements of SEPP (Sustainable Buildings) 2022 with respect to energy use, water use and thermal performance, including that area relating to the strict numerical non-compliant components
- The materials and finishes used in the proposed works (inclusive of the non-compliant components) will be compatible with the streetscape and adjoining developments. Materials will be robust, energy efficient and recycled where possible.
- The environmental impacts associated with the strict numerically non-compliant components, including those relating to:
    - solar access and overshadowing,
    - bulk and scale
    - visual and acoustic privacy and
    - view loss,

are acceptable and within those envisaged under Council's DCP controls.

- The intensity of the development is commensurate with the capacity of the existing and planned infrastructure within the locality.
- The proposed development will remain consistent with the desired future character of the locality and will sit well within the varied architectural typologies present, ensuring a harmonious integration with surrounding developments.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from maximum Height of Buildings Standard, the proposed variation is justified and there are sufficient environmental planning grounds to support the departure.

Consistency with Clause 4.6 of the RLEP
The objectives of Clause 4.6 are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

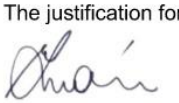
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this variation is well founded and worthy of support.

Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the Height of Building standard and the justified environmental planning grounds associated with the departure from the standard, have been demonstrated in this request.

The justification for the departure from the development standard is worthy of support.



Mark Swain MPIA
Principal
May 2026

[i] Photos shown in figures 5 – 7 from publicly available sources

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Appendix 3: DCP Compliance Table

3.1 C1 Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	**Site planning**	Site = 752.5sqm	
2.4	**Site coverage**		
	601 sqm or above = 45%	Max = 388.62sqm. DA/157/2021 = 171.6sqm Proposed = 241.5sqm (32%) Increase by more than 10% - deep soil and canopy controls triggered.	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	Minimum = 388.62sqm. DA/157/2021 = 277.2sqm. Proposed = 208.8sqm. 68.4sqm reduction and 179.82sqm shortfall of control. i) Counted. ii) Removal not proposed. iii) Front planting proposed to be removed. Not supported. Not supported by Council's landscape officer – see referral comments.	Compliance conditioned.
2.6	**Landscaping and tree canopy cover**		
	Minimum 25% canopy coverage 451 to 600 sqm = 4 large trees i) Minimum 25% front setback area permeable surfaces ii) 60% native species	Per RFI items – landscape plan was requested and not sufficiently provided. Not satisfied – not supported by landscape officer as proposed. Compliance conditioned.	Compliance conditioned.
2.7	**Private open space (POS)**		
	Dwelling & Semi-Detached POS		

<table>
<tr><th>DCP Clause</th><th>Controls</th><th>Proposal</th><th>Compliance</th></tr>
<tr><td></td><td>601 sqm or above = 8m x 8m</td><td>Existing POS retained.</td><td>Yes</td></tr>
<tr><td>3</td><td colspan="3">Building envelope</td></tr>
<tr><td>3.2</td><td colspan="3">Building height</td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td>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.</td><td>i) Existing approval provides a third storey.

ii) Achieved outside of loft level. That level has increased from previously approved height of 970mm-2290mm to become 2550mm.

iii) Heights suitable.

iv) DA/157/2021 approved with three storey presentation. The Application seeks to exacerbate that presentation and remove planting. Conditioned for a reduction to this form and reintroduction of planting. Per RFI, the applicant was advised of this but declined to do so.</td><td>Compliance conditioned.</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.

iii) Do not locate swimming pools, above-ground rainwater tanks and outbuildings in front.</td><td>i) Ground and first floor suitable front setback. Loft level to be brought back to previous front setback to reduce three storey presentation. Landscaping to be provided in front of this area as previously approved to soften bulk. Compliance conditioned.

iii) Not proposed.</td><td>Compliance 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>Frontage >12m.

See key issues.</td><td>See key issues</td></tr>
</table>

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DCP Clause	Controls	Proposal	Compliance
3.3.3	**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	i) Minimum = 8m. Proposed = 20.5 metres. ii) No predominant rear setback. See view assessment. See privacy and solar assessment. iii) Existing pool location to be retained. iv) Lot is suitably regular for consideration of the above controls.	Yes
4	**Building design**		
4.1	**General**		
	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).	Southern elevation proposes expansive brickwork without variation. Ground floor of that elevation does not provide suitable recessing. First floor balcony is extensive. Size is similar to previous approval, however it is pushed further back and is now irregular – screening would be necessary. Screening to the first floor balcony would be over the approved height limit and would contribute unnecessary addition bulk and height. Additional view impacts would also occur. The extent of the first floor balcony is accordingly inappropriate and it to be reduced via condition. Bedrooms meet size requirements.	Compliance conditioned.
4.4	**Roof terraces and balconies**		

DCP Clause	Controls	Proposal	Compliance
	i) Locate on stepped buildings only (not on uppermost or main roof) ii) Where provided, roof terraces must: • Prevent overlooking • Size minimised • Secondary POS – no kitchens, BBQs or the like • Maintain view sharing, minimise structures and roof top elements • Be uncovered and comply with maximum height iii) Locate above garages on sloping sites (where garage is on low side)	Roof terrace proposed on main roof of building. 4.4 prohibits this. Conditioned to be deleted.	No
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 provided.	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	Schedule provided. Selected materials appropriate with regard. Schedule to be amended to improve material variation on southern elevation, as discussed in 4.1 above.	Compliance conditioned.
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.	Additional cut of 3.6m to facilitate basement extension. ii) Setback appropriately. iii) Not proposed.	Suitable.

DCP Clause	Controls	Proposal	Compliance
	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.	Earthworks suitable with regard to significant slope. Undercroft area previously approved and not the result of excavation.	
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 windows and POS to receive adequate solar access.	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. 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.	Provided solar diagrams indicate no additional shadows to result from the amended DA.	Yes
5.2	**Energy Efficiency and Natural Ventilation**		

DCP Clause	Controls	Proposal	Compliance
	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	Suitable openings for daylight as proposed.	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> W11 – sil to be increased from 1m to 1600mm. <u>GF</u> W8/9 – expansive floor to ceiling window with direct views to neighbouring window. W17 expansive floor to ceiling window with direct views to neighbouring window. Privacy conditions imposed for the above. <u>FF</u> All north elevations windows have direct views to adjoining windows and all are at similar RLs to neighbour. All north first floor windows to have privacy conditions imposed. <u>SF</u> Appropriate – to be screened.	Privacy condition imposed for identified windows.
	Balcony		

DCP Clause	Controls	Proposal	Compliance
	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.	All balconies to require side screening. Conditioned as required – subject to view assessment.	Compliance conditioned.
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.	New pool pump proposed. Condition to ensure this is within an acoustic treatment. Otherwise suitable.	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)	Maintained. Fence height suitable due to Malabar Road.	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.	See view assessment.	See view assessment.
6	**Car Parking and Access**		
6.1	**Location of Parking Facilities:**		
	All dwellings		

DCP Clause	Controls	Proposal	Compliance
	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 maintained. ii) Not feasible. iii) Location the same as existing and approved under DA/157/2021. iv) Double width garage proposed. Streetscape exhibits many forward alignment garages. Tandem proposed. Driveway suitable.	Yes
6.2	**Parking Facilities forward of front façade alignment**		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: – There is no alternative, feasible location for accommodating car parking; – Significant slope down to street level – does not adversely affect the visual amenity of the street and the surrounding areas; – does not pose risk to pedestrian safety and – does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) – Compliments architectural character of dwelling ie roof pitch and finishes.	i) Garage proposed. Approved carport sought to be enclosed and converted to a garage. ii) Slope and orientation makes alternative not suitably feasible. Slope 10m from front to rear. Streetscape exhibits similar forward alignment garages. Setback provided to improve pedestrian views. Significant landscape elements not proposed to be removed.	Suitable.
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.	Setbacks increased over existing approval – see key issues. Garage setbacks suitable through improvement.	Suitable
6.4	**Driveway Configuration**		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m	6.5m – splay provided which increases width –	Suitable

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DCP Clause	Controls	Proposal	Compliance
	Must taper driveway width at street boundary and at property boundary	appropriate as it would improve sightlines.	
6.5	**Garage Configuration**		
	i) Recessed behind front of dwelling ii) Maximum garage width (door and piers or 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)	i) Intergrated into dwelling. ii) 5.8m. iii) 9.9m. iv) Not detached. v) Provided. vi) No bulkhead. vii) 2300mm.	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	Materials suitable.	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.	1800mm proposed – Malabar Road suitably considered arterial. Solid materials appropriate in this regard.	Yes

DCP Clause	Controls	Proposal	Compliance
	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.		
7.3	**Side and rear fencing**		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	Side fencing partially proposed on the Subject Site to abut adjoining boundary wall. Additional height detail of side fencing to be conditioned.	Condition for additional detail required.
7.5	**Swimming pools and Spas**		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. i) Pool and coping level related to site topography (max 1m over lower side of site). ii) Where pool coping height is above natural ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties. iii) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full length of pool to be provided. Planting to comply with legislation for non-climbable zones. iv) Incorporate screening or planting for privacy as above, unless need to retain view corridors. v) Position decking to minimise privacy impacts. vi) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	Existing pool retained. Pool pump proposed – per acoustic privacy condition imposed to ensure it is within an acoustic enclosure. Additional 400mm caping proposed around pool and 1100mm high metal pool gate proposed. Privacy impacts not anticipated from caping changes. Standard pool condition to be imposed.	Yes

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.	Appropriate subject to relevant conditions as assessed in this report.	Suitable

Responsible officer: Dean Lidis, Environmental Planning Officer

File Reference: DA/258/2026

Randwick City Council
a sense of community

Randwick City Council
30 Frances Street
Randwick NSW 2031
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www.randwick.nsw.gov.au
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D41/26

Our Ref: DA/157/2021

DEVELOPMENT APPLICATION
NOTICE OF DETERMINATION

Issued under the Environmental Planning and Assessment Act 1979
Sections 4.16, 4.17 & 4.18 (1)(a)

Development Application No: DA/157/2021

Superior Designs
9 Nix Ave
MALABAR NSW 2036

Property Address: 301 Malabar Road, MAROUBRA NSW 2035

Description of Work: Proposed alterations and additions to existing dwelling.

Determination: **Approved**

Determination Date: **7 May 2021**

Consent to operate from: 7 May 2021

Consent to lapse on: 7 May 2026

Prior to the commencement of any building, construction, 'fit-out' or subdivision works, a construction certificate must be obtained from an Accredited Building Certifier or Council, in accordance with Section 6.7 of the Environmental Planning and Assessment Act 1979.

Development Consent Conditions

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

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

Plan	***Drawn by***	***Dated***
A101	Superior Design	23/3/2021
A300	Superior Design	23/3/2021

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A301	Superior Design	23/3/2021
A302	Superior Design	23/3/2021
A303	Superior Design	23/3/2021
A304	Superior Design	23/3/2021
A400	Superior Design	23/3/2021
A401	Superior Design	23/3/2021
A500	Superior Design	23/3/2021
A501	Superior Design	23/3/2021
A502	Superior Design	23/3/2021
A801	Superior Design	23/3/2021

BASIX Certificate No.	***Dated***
A408265_02	18/3/2021

Amendment of Plans & Documentation

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

   a. The following windows must have a minimum sill height of 1.6m above floor level, or alternatively, the windows are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:

      - W11, W12 & W21

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a *'Construction Certificate'* is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

3. The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.

External Colours, Materials & Finishes

4. Details of the proposed colours, materials and textures, including all external finishes and roof (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by [Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of $429 000 the following applicable monetary levy must be paid to Council: $4 290.00.

   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 6999 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.

Compliance Fee

6. A development compliance and enforcement fee of $429.00 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

7. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, must be forwarded to the Long Service Levy Corporation or the Council, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of $25,000 or more, at the rate of 0.35% of the cost of the works.

Sydney Water

8. 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 waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Sydney Water Tap in™ online service replaces the Quick Check Agents as of 30 November 2015

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

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- 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.

Design Alignment levels

9. 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:

- **Match the back of the existing Council footpath levels along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the Council footpath must be indicated on the building plans for the construction certificate (a construction note on the plans is considered satisfactory). The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

10. The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **$168**. This amount is to be paid prior to a construction certificate being issued for the development.

11. Surface water from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:-

a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);

b) The surface water/stormwater is to be drained and discharged to the street gutter where possible or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;

c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;

d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;

e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

12. 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.

13. 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.

14. 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.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia

15. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning* & Assessment *Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA). Details of compliance with the BCA are to be included in the construction certificate application.

Structural Adequacy

16. 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 …… [e.g. additional storey/upper floor addition].

BASIX Requirements

17. In accordance with section 4.17(11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, 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.

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Stormwater Drainage

18. 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 or cause a nuisance;

d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;

e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The necessary documentation and information must be provided to the Council or the '*Principal Certifier*', as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Certification & Other Requirements

19. Prior to the commencement of any building works, the following requirements must be complied with:

a) a *Construction Certificate* must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

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 *Principal Certifier* must be appointed 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 are to be notified accordingly; 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 Council, in writing, prior to commencing any works.

Home Building Act 1989

20. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning* & Assessment *Regulation 2000*, 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.

Construction Site Management Plan

21. 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 fencing / hoardings to the perimeter of the site;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- site access location and construction;
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- provisions for temporary sanitary facilities;
- location and size of waste containers/bulk bins;
- details of proposed sediment and erosion control measures;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details.

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.

Demolition Work Plan

22. Demolition Work must be carried out in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant work health and safety provisions and the following requirements:

a) A Demolition Work Plan must be prepared for the demolition works which should be submitted to the Principal Certifier, not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

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

b) Any materials containing asbestos (including Fibro) must be safely removed and disposed of in accordance with the NSW Work Health and Safety Regulation 2017, SafeWork NSW Code of Practice for the Safe Removal of Asbestos, Protection of Environment Operations (Waste) Regulation 2014 and Council's Asbestos Policy.

Public Utilities

23. 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.

24. 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.

NOTE: The existing overhead power feed between the mains distribution power pole in Malabar Road and the development site shall remain connected to the façade of the dwelling or be relocated to an underground (UGOH) connection. No Permanent Private Poles are to be installed. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out any required works to the requirements and satisfaction of Ausgrid and at no cost to Council.

Street Tree Protection Measures

25. In order to ensure the retention of the Council Street Tree located in front of the site in good health, the following measures are to be undertaken prior to the commencement of any demolition/building works:

a. All documentation submitted for the Construction Certificate application must show the retention of this tree, with the position and diameter of both its trunk and canopy to be clearly and accurately shown on all plans in relation to the proposed works.

b. Any excavations associated with the installation of new services, pipes, stormwater systems or similar over public property, must be setback a minimum distance of 1.00m from the trunk of the tree, so as to minimise root damage to the street trees.

c. Where roots with a diameter of less than 75mm are found which are in direct conflict with the works, and permission is given for their pruning, they are to be cut cleanly by hand, with the affected area to be backfilled with clean site soil as soon as practically possible.

d. Prior to the commencement of any site works, the trunk of this tree is to be physically protected by wrapping layers of geo-textile, underfelt or layers of Hessian, to which, 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

The following conditions of consent must be complied with during the demolition, excavation and construction of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

26. Building works are required to be inspected by the *Principal Certifier*, in accordance with the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Site Signage

27. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:

- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
- name, address and telephone number of the *Principal Certifier*,
- a statement stating that "unauthorised entry to the work site is prohibited".

Restriction on Working Hours

28. 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
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	• Monday to Friday - 8.00am to 1.00pm • 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.

Removal of Asbestos Materials

29. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifier and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2014*. Details of the disposal of materials containing asbestos (including receipts) must be provided to the Principal Certifier and Council.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

  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.

Public Safety & Site Management

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

a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.

Temporary site fences are required to be constructed of cyclone wire fencing material and be structurally adequate, safe and constructed in a professional manner. The use of poor quality materials or steel reinforcement mesh as fencing is not permissible.

b) 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.

c) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

d) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 *to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.*

e) Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom, and details are to be included in the *Construction site Management Plan.*

f) Site fencing, building materials, bulk bins/waste containers and other articles must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.

g) 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.

Support of Adjoining Land, Excavations & Retaining Walls

31. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning* & Assessment Regulation 2000, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

32. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is *excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.*

Details of proposed retaining walls, shoring, piling or other measures are to be submitted to and approved by the Principal Certifier.

33. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*:

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- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
- when undertaking demolition work to a wall of a dwelling 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;
- as may be required by the *Principal Certifier*.

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*.

Building Encroachments

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

Road/Asset Opening Permit

35. A *Road / Asset Opening Permit* must be obtained from Council prior to commencing any excavations or 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.

For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.

Road / Asset Opening Permit

36. 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, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.

Ausgrid Power Feed Connection from Power Pole

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

a) From the power pole directly to the façade of the dwelling, similar to the existing connection, to the satisfaction of Ausgrid. **OR**

b) Relocate the existing overhead power feed from the distribution power pole in the street to the development site via an underground (UGOH) connection (No Private Pole is to be provided). These works are to be to Ausgrid requirements.

Note: A Private Power Pole at the front of the site is not permitted. The applicant is to liaise with an Ausgrid Accredited Service Provider to carry out the works as mentioned above at their own expense to the satisfaction of Ausgrid and the Principal Certifier.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the *'Principal Certifier'* issuing an *'Occupation Certificate'*.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

38. 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 & Assessment Act 1979*.

BASIX Requirements

39. In accordance with Clause 154B of the *Environmental Planning & Assessment Regulation 2000*, 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.

Council's Infrastructure, Vehicular Crossings, street verge

40. The applicant must meet the full cost for a Council approved contractor to:

a) Reconstruct the concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, if required. The works are to be to Council's specifications and requirements.

Note: The Council layback should not exceed a length of 5.00m

b) Remove any redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specifications and requirements.

41. 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.

42. 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.

43. That part of the naturestrip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

Undergrounding of Power

44. Prior to the issuing of an Occupation Certificate the Principal Certifier shall ensure that all power supply to the development site has complied with one of the following:

a) From the power pole directly to the façade of the dwelling, similar to the existing connection, to the satisfaction of Ausgrid. **OR**

b) Relocate the existing overhead power feed from the distribution power pole in the street to the development site via an underground (UGOH) connection (No Private Pole is to be provided). These works are to be to Ausgrid requirements.

All private poles must be removed prior to the issuing of an occupation certificate, unless otherwise approved in writing by Council's Development Engineering Coordinator.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Use of Premises

45. The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.

External Lighting

46. 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.

Plant & Equipment

47. 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*.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq,\ 15\ min}$ sound pressure level at any affected premises that exceeds the background $L_{A90,\ 15\ min}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Office of Environment & Heritage (EPA) Noise Control Guidelines.

Air Conditioners

48. Air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:

- before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
- before 7.00am or after 10.00pm on any other day.

Rainwater Tanks

49. The operation of plant and equipment associated with rainwater tanks are to be restricted to the following hours if the noise emitted can be heard within a habitable room in any other residential premises:

- before 8.00am or after 8.00pm on weekends or public holiday; or
- before 7.00am or after 8.00pm on weekdays.

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and Council's policies. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of $1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to $3,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

A2 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA) and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards and you are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

A3 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:

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- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
- An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
- Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.

A4 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.

A5 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

A6 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.

A7 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the Access to *Neighbouring Land Act 2000*, or
- an easement under section 88K of the *Conveyancing Act 1919*, or
- an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

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

A8 Council's assessment of this application does not include an assessment of compliance with the *Swimming Pool Act 1992.* All pool barriers, fences and structures within properties containing a swimming pool must comply with the requirements of the *Swimming Pool Act 1992,* BCA and relevant Australian Standards.

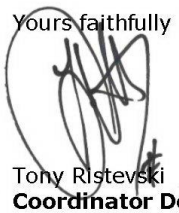
Details of compliance with the *Swimming Pool Act 1992,* Building Code of Australia and relevant Standards must be included in the Construction Certificate to the satisfaction of the Certifier.

A9 Underground assets (eg pipes, cables etc) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

A10 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

A11 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.

Yours faithfully



Tony Ristevski
Coordinator Development Assessment

Rights of Appeal and Review of Determination:

- If you are dissatisfied with this decision, Section 8.7 of the Environmental Planning and Assessment Act 1979 (Act) gives you the right to appeal to the Land and Environment Court. In accordance with section 8.10 of the Act, your appeal must be made within 6 months after the date on which you receive this notice.

- Division 8.2 of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to Review the determination. The request must be made in writing (or on the review application form) and determined within six (6) months after the 7 May 2021, as specified in this notice of determination. Appropriate fees must be paid when the request is made.

General Advisory Notes & Requirements:

Legal requirements prior to commencing any building or subdivision works:

Prior to commencing any building, subdivision or associated works (including any shop or office 'fit-out' work), the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') and the Environmental Planning & Assessment Regulation 2000 (the 'Regulation') are to be complied with:

(i) A Construction Certificate is to be obtained in accordance with the Act.

(ii) A Building Certifier (Principal Certifying Authority) is to be appointed and Council is to be notified of the appointment in accordance with the Act and clause 103 of the Regulation.

(iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with the Act and the Regulation.

The applicant may apply to an Accredited Building Certifier or Council to issue a Construction Certificate and to be appointed as the Principal Certifying Authority to monitor compliance with the approval and to issue the occupation certificate.

Building Code of Australia
The Construction Certificate plans and associated specifications must comply with the relevant provisions of the National Construction Code - Building Code of Australia (BCA) and the building work must be carried out in accordance with development consent and Construction Certificate.
The assessment of this development application does not include an assessment under the BCA and details of compliance with the relevant provisions of the BCA and conditions of development consent are to be provided in the plans, specifications and documentation for the Construction Certificate.

Compliance with development consent
Please note that the development and all building work must be carried out fully in accordance with the development consent and conditions of consent.
It is an offence to carry out any unauthorised development or building work or to carry out any development or building work that is not in accordance with Council's development consent.
An offence under Environmental Planning and Assessment Act 1979 and Regulations is subject to a penalty up to $5 million and $110,000 respectively. Alternatively, Council may issue a penalty infringement notice (for up to $6000) for each offence.
Council may also serve a notice and an order to require the demolition/removal of unauthorised building work or to require full compliance with Council's development consent.
Prior to commencement of any variations from the approved plans and conditions of approval, an amended development application must be submitted to and approved by Council. Also, a (new or amended) Construction Certificate must be obtained from the appointed Building Certifier.
Failure to obtain the required prior written development consent from council for any variations to the consent (and failure to obtain a new/amended construction certificate) is an offence, which may result in the above penalties or infringements.

Construction certificate applications
Applications for a Construction Certificate (that are made to Council) are to be made in the standard form and (as applicable) the following details may be required to be provided in the application:

- *a completed Construction Certificate application form and payment of the appropriate fee.*
- *detailed architectural building plans and building specifications.*
- *structural engineering plans, detailing; all reinforced concrete floor slabs, footings, beams, columns and other structures; retaining walls; piers; underpinning; shoring systems; structural steelwork and framing details (as applicable).*
- *other technical details (i.e. details of mechanical ventilation systems, stormwater drainage, timber framing and roof trusses, termite protection, sediment control, boundary/party wall construction, masonry construction, acoustic and sound transmission, glazing, wet areas, smoke alarm systems and other fire safety provisions), where applicable.*
- *full details of compliance with the provisions of the Building Code of Australia, including details of the standards of construction that are to be complied with (i.e. Australian Standards).*
- *a list of existing and proposed fire safety measures (ie. fire doors, hose reels, fire hydrants, fire extinguishers, sprinkler systems, fire and smoke detection systems, smoke hazard management systems, exit signs and emergency lighting etc), except in relation to dwellings and associated structures.*
- *any compliance certificates relied upon.*
- *details of payment of the Building Industry Long Service Levy, in relation to building work which costs $25,000 or more*
- *details of compliance with the Home Building Act Insurance Provisions, in relation to residential building work.*
- *details of existing and proposed swimming pool fencing and barriers showing compliance with the Swimming Pools Act 1992 and AS1926 and details of acoustic enclosures for pool equipment.*

Inspection of building works
The appointed Building Certifier (Principal Certifying Authority) is required to specify the stages of construction which are to be inspected (including relevant 'critical stage' inspections), to ensure

that the development complies with the relevant requirements of the development consent, National Construction Code - Building Code of Australia and Australian Standards.
Reference should be made to clause 162A of the Environmental Planning & Assessment Regulation 2000 for details relating to the critical stage inspections.

Occupation Certificate requirements
An occupation certificate must be obtained from the Appointed Building Certifier (principal certifying authority), prior to occupation of the new building work or part of a building (including alterations and additions) or, a change of building use, as required by the Environmental Planning & Assessment Act 1979.
Failure to obtain the required occupation certificate is an offence and is subject to a maximum penalty of up to $110,000 or the issue of a penalty infringement notice.

Fire safety requirements
Under the provisions of Part 9 of the Environmental Planning and Assessment Regulation 2000 (except in relation to class 1a dwellings and class 10 non-habitable buildings or structures):

- *A 'Fire Safety Certificate' is required to be submitted to the Council and the Fire & Rescue New South Wales prior to occupation of the building and a fire safety statement is to be provided on an annual basis thereafter, in relation to all of the essential fire safety measures within the building premises.*
- *All of the Fire Safety measures within the premises must be included in a single and complete Fire Safety Certificate, which must be the same measures as those contained in the relevant 'Fire Safety Schedule' for the development. Any variations or amendments to the Fire Safety Schedule must be approved by the appointed Building Certifier and written details must be provided to Council accordingly.*
- *Following the issue of a Fire Safety Certificate, a Fire Safety Statement must be submitted to Council on an annual basis, which certifies that all of the essential fire safety measures are present and operational in accordance with the relevant standards of performance.*
- *A copy of the current Fire Safety Schedule and Fire Safety Certificate/Statement must also be displayed in a conspicuous position within the building at all times.*
- *Failure to submit a Fire Safety Statement by the due date annually is an offence which may result in the issuing of a penalty infringement notice of up to $4,000.*

Sydney Water Requirements
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 waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.
The Sydney Water Tap in™ online service replaces the Quick Check Agents as of 30 November 2015
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 appointed Building Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.

Safework NSW requirements
The applicant, owner and builder is advised to ensure that the relevant requirements of Safe Work New South Wales are complied with, in relation to occupational health and safety, including the handling of hazardous materials (i.e. materials containing asbestos). Further information can be obtained from the WorkCover New South Wales 400 Kent Street, Sydney, NSW, 2000 or telephone 9370 5000 or 13 10 50.

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Disability Discrimination Act
The applicant/owner is advised that this approval does not guarantee compliance with the provisions of the Disability Discrimination Act 1992 and the applicant should therefore consider their liability under the Act. In this regard, the applicant is advised that compliance with the requirements of the Building Code of Australia and Australian Standard 1428.1 - Design for Access and Mobility does not necessarily satisfy the objectives of the Disability Discrimination Act 1992.
The applicant/owner is requested to give consideration to providing access and facilities for people with disabilities in accordance with Australian Standard 1428 Parts 1, 2, 3 and 4 - Design for Access and Mobility, which may be necessary to satisfy the objectives of the Disability Discrimination Act 1992.

Local Government Act requirements
A separate Local Approval application is required to be submitted to and approved by Council if it is proposed to place any articles, site fencing, hoardings, materials or waste containers in a public place and to hoist or use a crane over a footway, in accordance with Section 68 of the Local Government Act 1993.

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

Access to adjoining land, encroachments and work affecting other premises
This consent does not authorise any trespass, encroachment or carrying out of any works upon any adjoining land or building whether private or public. Where any access, underpinning, shoring or any other works are proposed to be carried out upon any adjoining land (including work affecting party walls, common roof construction or any other building works on or adjacent to the site boundaries), the owner/builder must obtain:
a) the consent of the owners of the adjoining land to access, carry out works or encroach upon their land, or otherwise affect an easement, right-of-way or other restriction on the certificate of title, or
b) an access order under the Access to Neighbouring Land Act 2000, or
c) an easement under section 88K of the Conveyancing Act 1919, or
d) an easement under section 40 of the Land & Environment Court Act 1979 as appropriate.
Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

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

Further Information
Should you require further information on the determination of this development application, please contact Perry Head between 9am to 12 noon Monday to Friday on 9093 6733.

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English
If you need help to understand this letter, please come to Council's Customer Service Centre and ask for assistance in your language or you can contact the Telephone Interpreter Service (TIS) on 131 450 and ask them to contact Council on 1300 722 542.

Greek
Αν χρειάζεστε βοήθεια για να καταλάβετε αυτή την επιστολή, παρακαλείστε να έρθετε στο Κέντρο Εξυπηρέτησης Πελατών της Δημαρχίας (Council Customer Service Centre) και να ζητήσετε βοήθεια στη γλώσσα σας ή τηλεφωνήστε στην Τηλεφωνική Υπηρεσία Διερμηνέων (Telephone Interpreter Service — TIS) τηλ. 131 450 και να ζητήσετε να επικοινωνήσουν με τη Δημαρχία τηλ. 1300 722 542.

Italian
Se avete bisogno di aiuto per capire il contenuto di questa lettera, recatevi presso il Customer Service Centre del Municipio dove potrete chiedere di essere assistiti nella vostra lingua; oppure mettetevi in contatto con il Servizio Telefonico Interpreti (TIS) al 131 450 e chiedete loro di mettersi in contatto col Municipio al 1300 722 542.

Croatian
Ako vam je potrebna pomoć da biste razumjeli ovo pismo, molimo dođite u Općinski uslužni centar za klijente (Council's Customer Service Centre) i zatražite pomoć na svom jeziku, ili možete nazvati Telefonsku službu tumača (TIS) na 131 450 i zamoliti njih da nazovu Općinu na 1300 722 542.

Spanish
A la persona que necesite ayuda para entender esta carta se le ruega venir al Centro de Servicios para Clientes [Customer Service Centre] de la Municipalidad y pedir asistencia en su propio idioma, o bien ponerse en contacto con el Servicio Telefónico de Intérpretes ["TIS"], número 131 450, para pedir que le comuniquen con la Municipalidad, cuyo teléfono es 1300 722 542.

Vietnamese
Nếu quí vị không hiểu lá thơ này và cần sự giúp đỡ, mời quí vị đến Trung Tâm Dịch Vụ Hướng Dẫn Khách Hàng của Hội Đồng Thành Phố (Council's Customer Service Centre) để có người nói ngôn ngữ của quí vị giúp hay quí vị có thể liên lạc Dịch Vụ Thông Dịch qua Điện Thoại (TIS) ở số 131 450 và yêu cầu họ liên lạc với Hội Đồng Thành Phố (Council) ở số 1300 722 542.

Polish
Jeśli potrzebujesz pomocy w zrozumieniu treści tego pisma, przyjdź do punktu obsługi klientów (Customer Service Centre) przy Radzie Miejskiej i poproś o pomoc w języku polskim, albo zadzwoń do Telefonicznego Biura Tłumaczy (Telephone Interpreter Service — TIS) pod numer 131 450 i poproś o skontaktowanie się z Radą Miejską (Council) pod numerem 1300 722 542.

Indonesian
Jika Anda memerlukan bantuan untuk memahami surat ini, silakan datang ke Pusat Pelayanan Pelanggan (Customer Service Centre) Pemerintah Kotamadya (Council) dan mintalah untuk bantuan dalam bahasa Anda, atau Anda dapat menghubungi Jasa Juru Bahasa Telepon (Telephone Interpreter Service - TIS) pada nomor 131 450 dan meminta supaya mereka menghubungi Pemerintah Kotamadya pada nomor 1300 722 542.

Turkish
Bu mektubu anlamak için yardima ihtiyaciniz varsa, lütfen Belediye'nin Müşteri Hizmetleri Merkezi'ne gelip kendi dilinizde yardim isteyiniz veya 131 450'den Telefonla Tercüme Servisi'ni (TIS) arayarak onlardan 1300 722 542 numaradan Belediye ile ilişkiye geçmelerini isteyiniz.

Hungarian
Amennyiben a levél tartalmát nem érti és segítségre van szüksége, kérjük látogassa meg a Tanácsház Ügyfél Szolgálatát (Customer Service Centre), ahol magyar nyelven kaphat felvilágosítást, vagy hívja a Telefon Tolmács Szolgálatot (TIS) a 131 450 telefonszámon és kérje, hogy kapcsolják a Tanácsházat a 1300 722 542 telefonszámon.

Czech
Jestliže potřebujete pomoc při porozumění tohoto dopisu, navštivte prosím naše Středisko služeb pro veřejnost (Council's Customer Service Centre) a požádejte o poskytnutí pomoci ve vaší řeči anebo zavolejte Telefonní tlumočnickou službu (TIS) na tel. čísle 131 450 a požádejte je, aby oni zavolali Městský úřad Randwick na tel. čísle 1300 722 542.

Arabic
إذا أردت مُساعدة لفهم هذه الرسالة، نرجوك الحضور إلى مركز خدمة عملاء المجلس واطلُب المُساعدة في لغتك، أو يُمكنك الإتصال بخدمة الترجمة الهاتفية (TIS) على هاتف رقم 131 450 واطلُب منهم الإتصال بالمجلس على رقم 1300 722 542.

Chinese
如果你需要人幫助你了解這封信的內容，請來市政會顧客服務中心要求翻譯服務，或者與電話傳譯服務（TIS）聯係，號碼是131 450，請他們幫助你打電話給市政會，號碼是1300 722 542。

Russian
Если Вам требуется помощь, чтобы разобраться в этом письме, то, пожалуйста, обратитесь в Муниципальный Центр Обслуживания Клиентов и попросите оказать Вам помощь на Вашем языке или же Вы можете позвонить в Телефонную Службу Переводчиков (TIS) по номеру 131 450 и попросить их связаться с Муниципалитетом по номеру 1300 722 542.

Serbian
Ако вам треба помоћ да разумете ово писмо, молимо вас да дођете до Центра за услуге муштеријама при Општини (Customer Service Centre) и замолите их да вам помогну на вашем језику, или можете назвати Телефонску преводилачку службу (TIS) на 131 450 и замолите их да вас повежу са Општином на 1300 722 542.

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Draft Development Consent Conditions

Folder /DA No:	DA/258/2026
Property:	301 Malabar Road, MAROUBRA NSW 2035
Proposal:	Amendments to development consent for DA/157/2021 including reconfiguration of the internal layout of the dwelling with new lift, conversion of attached carport to garage, new balcony at loft level, changes to pool deck and alterations to structural columns at basement and lower ground floor levels.
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):

Drawing	*Drawn by*	*Dated*	*Received by Council*
Proposed Site and Roof Plan Rev C	Some Studio.	12/05/2026	21/05/2026
Demolition Plan – Basement Rev B	Some Studio.	07/05/2026	21/05/2026
Demolition Plan – Lower Ground Rev B	Some Studio.	07/05/2026	21/05/2026
Demolition Plan – Ground Rev B	Some Studio.	07/05/2026	21/05/2026
General Arrangement Plan – Basement Rev C	Some Studio.	12/05/2026	21/05/2026
General Arrangement Plan – Lower Ground Rev C	Some Studio.	12/05/2026	21/05/2026
General Arrangement Plan – Ground Rev C	Some Studio.	12/05/2026	21/05/2026
General Arrangement Plan – First Floor Rev C	Some Studio.	12/05/2026	21/05/2026
General Arrangement Plan – Loft Rev C	Some Studio.	12/05/2026	21/05/2026
General Arrangement Plan – Roof Plan Rev C	Some Studio.	12/05/2026	21/05/2026
West (Front) Elevation Rev B	Some Studio.	07/05/2026	21/05/2026
East (Rear) Elevation Rev B	Some Studio.	07/05/2026	21/05/2026
North Elevation Rev C	Some Studio.	12/05/2026	21/05/2026
South Elevation Rev C	Some Studio.	12/05/2026	21/05/2026
North Section Rev C	Some Studio.	12/05/2026	21/05/2026
Sections A & B Rev C	Some Studio.	12/05/2026	21/05/2026
Streetscape Elevation Rev B	Some Studio.	07/05/2026	21/05/2026
Finishes Schedule Rev B	Some Studio.	07/05/2026	21/05/2026
Door and Window Schedule 1 – West (Front) Rev B	Some Studio.	12/05/2026	21/05/2026
Door and Window Schedule 2 – North Rev B	Some Studio.	07/05/2026	21/05/2026

Condition

Door and Window Schedule 3 – North Rev B	Some Studio.	07/05/2026	21/05/2026
Door and Window Schedule – South & East (Rear) Rev B	Some Studio.	07/05/2026	21/05/2026
Door and Window Schedule 5 Rev B	Some Studio.	07/05/2026	21/05/2026
Door and Window Schedule 6 Rev C	Some Studio.	12/05/2026	21/05/2026
Concept Landscape Plan S4.55	ISCdesign Architect	23/09/2025	19/05/2026

BASIX Certificate No.	***Dated***	***Received by Council***
A1836890	11 March 2026	12 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 under Condition 1 must be amended in accordance with the below requirements.

Amended documents must be provided to and approved by Council's Manager Development Assessment prior to the issue of any construction certificate.

a) The second floor / loft level must be amended to return the front and southern side setbacks to those setbacks approved under DA/157/2021. Internal reconfiguration of the loft level to facilitate this change is permitted.

b) The southern elevation is to be amended as follows:

i. Additional materiality must be introduced on the southern elevation to break up the extensive brickwork. The approved finishes schedule may be updated to include new materials to facilitate this;

ii. The southern ground floor protrusion which measures 1110mm to that southern side boundary must be set back in to align with the remainder southern wall;

iii. A physical recess in the ground floor southern elevation must be provided, similar to that in the approved for the first floor adjoining the bed 2 ensuite.

c) The first floor balcony must be reduced so that it measures no further than 1900mm from the external wall of the first floor master bedroom.

d) The northern elevation of the ground floor balcony must be amended to provide a privacy screen 1800mm high from FFL 51.65.

e) The following windows must be amended to provide privacy treatment:

i. Lower Ground Floor:
- Window W11.

ii. Ground Floor;
- Window W8, W9, and W17.

iii. First Floor
- Windows W12, W12A, W13, W15, W23, W23A.

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Condition

One following privacy treatments must be selected and applied to any window. Different treatments may be applies to differed windows.

1. Sil height of 1600mm from their respective FFL;
2. Sandblasted, frosted, or opaque glazing up to 1600mm from their respective FFL; or
3. Privacy screens beginning at the respective FFL, constructed with either:
   - 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.

f) The pool and pump room under the new deck must be within an acoustic enclosure. The approved drawings must indicate this, and subsequent construction certificate drawings must provide specifications for the acoustic enclosure.

g) Additional north and south elevation drawings must be provided which clearly annotates the height of the walls approved up to the adjoining north and south boundaries.

h) All floor plans must be amended to provide FFL levels consistent with the approved elevations.

i) The loft balcony must be deleted and the associated door access shall be changed to windows.

The above changes must be clouded and lettered in amended drawings submitted for Council's review.

The abovementioned plan revisions must be submitted to and approved by Council's Manager of Development Assessment prior to release of any construction certificate.

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

3. **Compliance with conditions approved by DA/157/2021**

Except where modified by this consent, including superseding of condition 1 in DA/157/2021, the development must be implemented in conjunction with the development approved under development consents DA/157/2021 including any associated modification applications.

All conditions of consent imposed on Development Consent No DA/157/2021 are to be read in conjunction with this development consent, and the Applicant must comply with the conditions of Development Consent No DA/157/2021 in carrying out the development approved pursuant to this development consent.

Notwithstanding the above, 7.12 contributions under Condition 5 of DA/157/2021 are still applicable and not superseded by this consent. To avoid doubt, 7.12 contributions under both DA/157/2021 and DA/258/2026 must be paid prior to the issue of a construction certificate.

Condition Reason: To ensure any requirements under DA/371/2019 and DA/371/2019/A are retained inclusive of the amending components of this DA and are included in the Construction Certificate documentation.

4. **Modification to DA/157/2021**

Condition
Prior to the commencement of the development approved by this consent, the development consent granted to Development Consent No. DA/157/2021 shall be modified pursuant to Section 4.17(1)(b) and (c) of the Environmental Planning and Assessment Act 1979 as detailed below: • Condition 2 of DA/157/2021 is to be deleted. Condition Reason: To ensure consistency between DA/157/2021 and the amending components of this DA.

BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
5.	**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.
6.	**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. Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.
7.	**Section 7.12 Development Contributions** In accordance with the applicable Randwick City Council S7.12 Development Contributions Plan, based on the development cost of $495,000 the following applicable monetary levy must be paid to Council: $4,950. 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.

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Condition

Condition Reason: To ensure relevant contributions are paid.

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

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

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

9. **Security Deposits**
The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making 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*:

- $2000.00 - Damage / Civil Works Security Deposit

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

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

To obtain a refund of relevant deposits, a *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.

10. **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.

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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.

11. **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.

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

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

13. **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.

14. **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.

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	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.
15.	**Building Code of Australia – Swimming Pools** Swimming Pools and Spa Pools are to be designed and installed in accordance 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.
16.	**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.

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17. **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:

Vehicle Access

- **Match the back of the existing Council footpath levels along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the roadway/kerb/footpath must be indicated on the building plans for the construction certificate (a construction note on the plans is considered satisfactory). The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

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

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6879.

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

18. **Design Alignment levels**

The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **$197** (as of 1st July 2025). This amount is to be paid prior to a construction certificate being issued for the development.

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

19. **Driveway Design**

The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate documentation.

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

20. **Garage Design**

The gradient of the garage must be designed and constructed to not exceed a grade of 1 in 20 (5%) and the levels of the garage must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate documentation.

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

21. **Stormwater Drainage**

Condition

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

The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.

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

22. **Stormwater Drainage**

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. To a suitably sized infiltration area. As a guide the infiltration area shall be sized based on a minimum requirement of 1 m2 of infiltration area (together with 1 m3 of storage volume) for every 20 m2 of roof/impervious area on the site.

Infiltration areas must be located a minimum of 3.0 metres from any structure (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 any adjacent side or rear boundary.

Prior to the use of infiltration in rear draining lots (where there is no formal overland escape route to Council's kerb and gutter/street drainage system), a geotechnical investigation will be required to determine whether the ground is suitable for infiltration. Should rock and/or a water table be encountered within two metres of the proposed base of the infiltration pit, or the ground conditions comprise low permeability soils such as clay, infiltration will not be appropriate.

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

23. **Stormwater Drainage**

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

i. There are suitable clear-outs/inspection points at pipe bends and junctions.

ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet.

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

24. **Stormwater Drainage**

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

Condition

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.

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

25. **Stormwater Drainage**

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.

26. **Landscape Plans**

The Adopted Landscape Plan S4.55 Concept Landscape Plans by ISC Design dated 23/9/2025 must be amended to now include the following requirements:

a) Minimum of 25% of front setback area must planted out and comprise deep soil permeable surfaces, to which, additional larger species must be planted within northwestern frontage, this will soften the frontage to the streetscape, taller screening species must be applied (not bamboo) within balconies, to also soften the frontage to streetscape.

b) 45% of the Subject Site must comprise deep soil permeable surfaces. Variation to this amount is at the discretion of Council's Manager Development Assessment.

c) Elevated planting is to be reintroduced into the first floor and second floor front setbacks, similar to that approved under DA/157/2021.

d) Native species. The plant schedule must meet the minimum 60% native species target, to comply with control

e) Canopy cover amounting to a minimum 25% of the total site area must be achieved, planting of two additional species within the rear, which must attain a mature height of around 6metres, no fruiting species, nor Palms to be applied

   If total quantity of 4 canopy trees cannot be provided within the site, to comply with DCP controls, additional tree/s will be planted elsewhere in the LGA at applicant's costs.

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

27. **Tree Management**

If the required total of four (4) canopy trees cannot be accommodated within the subject site, in accordance with Development Control requirements, additional tree(s) shall be planted elsewhere within the Randwick Local Government Area (LGA) at the applicant's cost

Where on-site provision is not feasible, the following option applies:

a) The applicant may make a contribution to Council for the planting of native tree(s) within the Randwick LGA. This is applicable where additional canopy trees cannot be provided on-site due to DCP constraints.

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*The cost of the street planting fee which includes the planting, staking, mulching, watering, general pruning care for the life of the tree, can be found on https://www.randwick.nsw.gov.au/__data/assets/pdf_file/0004/345469/Technical-Services-and-Domestic-Waste.pdf (Clause Part 2.6, point ii) of the C1 DCP, fee structure is found in our Councils website, Fees & Charges, Technical Services, Street Trees (page 4, Street Tree Planting Fee = **$1,765.00**)*

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.

This fee must be paid into **Tree Amenity Income** at the Cashier on the Ground Floor of the Administrative Centre **prior to a Construction Certificate being issued for the development.**

The applicant must contact Council's Landscape Development Officer on 9093-6633 (quoting the receipt number)

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

28. **Tree Management**

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.

29. **Protection of tree within street**

To ensure retention of mature *Banksia Serrata* (Saw Toothed Banksia) 5.5metres high, good vigour, good health, located within Maroubra Road Council verge, north of mains power pole, 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) Prior to the commencement of any site works, the trunk of this tree is to be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.

c) This protection 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".**

d) Where roots with a diameter of less than 50mm are found which are in

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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.

e) 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.

f) 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.

g) 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, **GIVING UP TO SIX WEEKS NOTICE**, with payment to be received prior to pruning or any Occupation Certificate.

h) 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.

i) 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 **$1300.00** 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/s.

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.

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.

Condition Reason: Protection and/or maintenance of existing environment public infrastructure, community assets and significant trees.

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30. **Protection of tree within property**

To ensure retention of established *Macadamia serratifolia* (Macadamia) in good vigour, good health, located within northeastern rear of the subject site, 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 2000 mm of its trunk, matching up with the eastern and northern common boundary fences, 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 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.

i) 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

j) The Principal Certifier must ensure compliance with these requirements,

Condition
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
31.	**Building Certification & Associated Requirements** The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work: a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment. b) a Registered (Building) Certifier must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an occupation certificate; and c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council must be notified accordingly (in writing); and d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.
32.	**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.
33.	**Dilapidation Reports** A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current

	Condition
	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.
34.	**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.
35.	**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.
36.	**Construction Noise & Vibration Management Plan** Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.

Condition

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

(a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.

(b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.

(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

(d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.

A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.

(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

Condition Reason: To protect the amenity of the neighbourhood during construction.

37. **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.

38. **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.

39. **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

40. **Site Signage**

It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:

a) showing the name, address and telephone number of the principal certifier for the work, and
b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
c) stating that unauthorised entry to the work site is prohibited.

The sign must be—

a) maintained while the building work is being carried out, and
b) removed when the work has been completed.

This section does not apply in relation to—

a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

41. **Restriction on Working Hours**

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	• 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.

42. **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.

43. **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.

44. **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

Condition

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.

45. **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.

46. **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.

	Condition
	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. 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.
47.	**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.
48.	**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.
49.	**Excavations and Support of Adjoining Land** In accordance with section 4.17 (11) of the *Environmental Planning and*

	Condition
	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.
50.	**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.
51.	**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.
52.	**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.
53.	**Vegetation Management** Due to their small size and insignificance, no objections are raised to **removing any small lower growing vegetation** within this development site where needed to accommodate the approved works as shown, except for the Macadamia tree within the rear of property which will be retained and protected Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.
54.	**Road / Asset Opening Permit**

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	Condition
	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.
55.	**Ausgrid Power Feed Connection** Should the existing overhead power feed from the Ausgrid Power Pole need to be reconnected to the site during any stage of building works it is to comply with either of the following methods: a) From the power pole directly to the façade of dwelling/s, similar to the existing connection, to the satisfaction of Ausgrid b) Relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground (UGOH) connection (No Private Pole is to be provided). These works are to be to Ausgrid requirements. Note: A temporary private power pole at the front of the site is permitted during construction but must be removed at the completion of works. The applicant is to liaise with an Ausgrid Accredited Service Provider to carry out the works as mentioned above at their own expense to the satisfaction of Ausgrid and the Principal Certifier. Condition Reason: To minimise the use of private poles in accordance with Council's resolution and protect street amenity.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

	Condition
56.	**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.
57.	**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.

Condition

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.

58. **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.

59. **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.

60. **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
	Condition Reason: To ensure the development satisfies Sydney Water requirements.
61.	**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.
62.	**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.
63.	**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.
64.	**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.
65.	**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.

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Condition

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.

66. **Council's Infrastructure, Vehicular Crossings, street verge**

The applicant must meet the full cost for a Council approved contractor to:

a) Reconstruct the concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site. The works are to be to Council's specifications and requirements.

Note: The Council layback should not exceed a width of 5.00m and must have a clearance of 0.75m from the nearby Ausgrid power pole.

b) Remove the redundant concrete vehicular crossing and layback 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.

67. **Council's Infrastructure, Vehicular Crossings, street verge**

The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

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

68. **Council's Infrastructure, Vehicular Crossings, street verge**

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

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.

Condition

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.

69. **Council's Infrastructure, Vehicular Crossings, street verge**

That part of the nature-strip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

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

70. **Undergrounding of Power**

The Principal Certifier shall ensure that all power supply to the development site has been provided as a direct overhead connection (similar to existing connection) or as an underground (UGOH) connection from the nearest main pole in Malabar Road, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. All private poles must be removed prior to the issuing of an occupation certificate, unless otherwise approved in writing by Council's Development Engineering Coordinator.

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

71. **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 Plan, S4.55 Concept Landscape Plans by ISC Design dated 23/9/2025

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.

OCCUPATION AND ONGOING USE

Condition

72. **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.

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	Condition
73.	**Condition Name** Condition Text Condition Reason:
74.	**Condition Name** Condition Text Condition Reason:
75.	**Condition Name** Condition Text Condition Reason:
76.	**Condition Name** Condition Text Condition Reason:
77.	**Condition Name** Condition Text Condition Reason:

DEMOLITION WORK
BEFORE DEMOLITION WORK COMMENCES

	Condition
78.	**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

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	Condition
	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
79.	**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*

Condition
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. D42/26

Subject: 1 Borrodale Road, Kingsford (DA/131/2026)

Executive Summary

Proposal:	Conversion of existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works.
Ward:	West Ward
Applicant:	Urban Pathways Consulting Pty Ltd
Owner:	Mr Pei Zhou & Xiaofen Min
Cost of works:	$13,200.00
Reason for referral:	The development contravenes the development standard for lot size, solar access, and landscaped area 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/131/2026 for conversion of an existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works., at No. 1 Borrodale Road, Kingsford, for the following reasons:

1. Pursuant to Clause 2.3 of the Randwick Local Environmental Plan 2012 (RLEP 2012), the proposal is inconsistent with the objectives of the R2 Low Density Residential Zone. The development fails to complement the desired future built form of the locality, does not achieve or protect a high level of residential amenity, is inconsistent with Council's strategic planning framework for residential development in the area, and does not facilitate a high standard of urban design.

2. Pursuant to Clause 24(2)(c) of the State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required landscaping area. Although the Applicant has submitted a written request to vary this development standard under Clause 4.6, the request does not adequately demonstrate that the non-compliance is unreasonable or unnecessary in the circumstances, nor does it establish sufficient environmental planning grounds to justify the variation.

3. Pursuant to Clause 24(2)(e) of the SEPP (Housing) 2021, the proposal fails to provide adequate solar access to communal living areas. While the Applicant has submitted a Clause 4.6 variation request, the justification does not satisfactorily demonstrate that the non-compliance is unreasonable or unnecessary, nor does it provide sufficient environmental planning grounds to support the variation.

4. Pursuant to Clause 24(2)(g)(i) of the SEPP (Housing) 2021, the proposal does not provide the required communal living areas. The Applicant has not submitted a written request to vary this development standard under Clause 4.6. Consequently, the Applicant has not demonstrated that the non-compliance is unreasonable or unnecessary, nor provided adequate environmental planning grounds to justify a variation.

5. Pursuant to Clause 25(1)(g)(i) of the SEPP (Housing) 2021, the suitability of the site has not been adequately demonstrated, as the site does not comply with the relevant minimum lot size development standard. Although the Applicant has submitted a Clause 4.6 variation request, the justification fails to demonstrate that the non-compliance is unreasonable or unnecessary and does not provide sufficient environmental planning grounds to support the variation.

6. Pursuant to the requirement for a complete and robust assessment, insufficient information has been submitted regarding potential acoustic impacts. As a result, the acoustic implications of the development cannot be properly assessed.

7. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to result in adverse environmental impacts, including poor amenity for future occupants and unacceptable acoustic impacts.

8. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the site is not suitable for the proposed development. The extent of the variations sought is unacceptable on merit and would result in adverse impacts.

9. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposed development is not in the public interest. The proposal would set an undesirable precedent by introducing an inappropriate form of high-density residential use and an excessive intensification of land use. The development represents an overdevelopment of the site, results in poor amenity outcomes for future occupants, generates potential acoustic impacts, and fails to comply with applicable development standards and planning controls under both State and Council policies.

Attachment/s:

Nil



1. Executive summary

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

- The development contravenes the *State Environmental Planning Policy (Housing) 2021* non-discretionary development standard for lot size by more than 10%
- The development contravenes the *State Environmental Planning Policy (Housing) 2021* non-discretionary development standard for solar access to communal living areas by more than 10%
- The development contravenes the *State Environmental Planning Policy (Housing) 2021* non-discretionary development standard for minimum landscaped area by more than 10%

The proposal seeks development consent for *conversion of an existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works.*

Council's compliance team investigated the premises after receiving a complaint from the community. On 28 October 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 is being used for purposes other than an approved dwelling house, and that extensive internal alterations have been undertaken without obtaining the prior development consent from Council.*

The works were said to include:

- *The formal living area on the ground floor has been partitioned and converted into two bedrooms.*
- *The casual living area on the ground floor has been partitioned and converted into two bedrooms.*
- *The second formal living area on the ground floor has been converted into a bedroom.*
- *The rear toilet on the ground floor has been converted into two separate toilets.*
- *A kitchen and sink have been installed within the master bedroom ensuite on the first floor.*
- *The cabinet area on the first floor has been converted into a kitchen with sink.*
- *One toilet and shower area on the first floor has been converted into two toilets and two showers with washing facilities.*

Following discussions between representatives of the property owner and Council's compliance team, the subject development application was lodged to seek approval for the unauthorised works and conversion of the dwelling type.

The key issues associated with the proposal relate to:

- Non-compliance with *State Environmental Planning Policy (Housing) 2021* requirements for communal living areas without written justification supporting the contravention (Clause 4.6 Request) – It is noted the area defined on the submitted architectural plans as communal living area is measured incorrectly by way of including circulation space that do not support the intention of the communal living area provisions.
- Non-compliance with *State Environmental Planning Policy (Housing) 2021* requirements for minimum lot size with failure to demonstrate that strict compliance with this standard is unreasonable or unnecessary in the circumstances of the case, and failure to demonstrate that there are sufficient environmental planning grounds to justify contravention of this development standard.
- Non-compliance with *State Environmental Planning Policy (Housing) 2021* requirements for minimum landscaped area with failure to demonstrate that strict compliance with this standard is unreasonable or unnecessary in the circumstances of the case, and failure to demonstrate that there are sufficient environmental planning grounds to justify contravention of this development standard.
- Non-compliance with *State Environmental Planning Policy (Housing) 2021* requirements for solar access with failure to demonstrate that strict compliance with this standard is unreasonable or unnecessary in the circumstances of the case, and failure to demonstrate that there are sufficient environmental planning grounds to justify contravention of this development standard.
- Insufficient documentation submitted with the Development Application including absence of an acoustic report which prevents assessment of internal and external noise impacts.
- The cumulative effect of the above resulting in substandard amenity and inconsistency with the R2 Low Density Residential zone.

2. Site Description and Locality

The subject site is known as 1 Borrodale Road, Kingsford and is legally described as Lot 1 in DP 12842. The site has an area of 442.9m^2 and is a regularly shaped corner allotment with dual street frontages to Borrodale Road (8.70m) and Leonard Avenue (33.09m).

The site is not topographically challenged and is relatively flat with a gentle slope from the northern boundary (RL 19.47) to the southern rear boundary (RL 18.84) which amounts to an approximate fall of 0.63m.

The site presently contains a two-storey bricked dwelling house with an integrated double garage. (Refer Figures 2 - 3). With the surrounding development primarily comprising residential dwellings by way of single detached dwellings and semi-detached dwellings (Refer Figures 4 - 5).

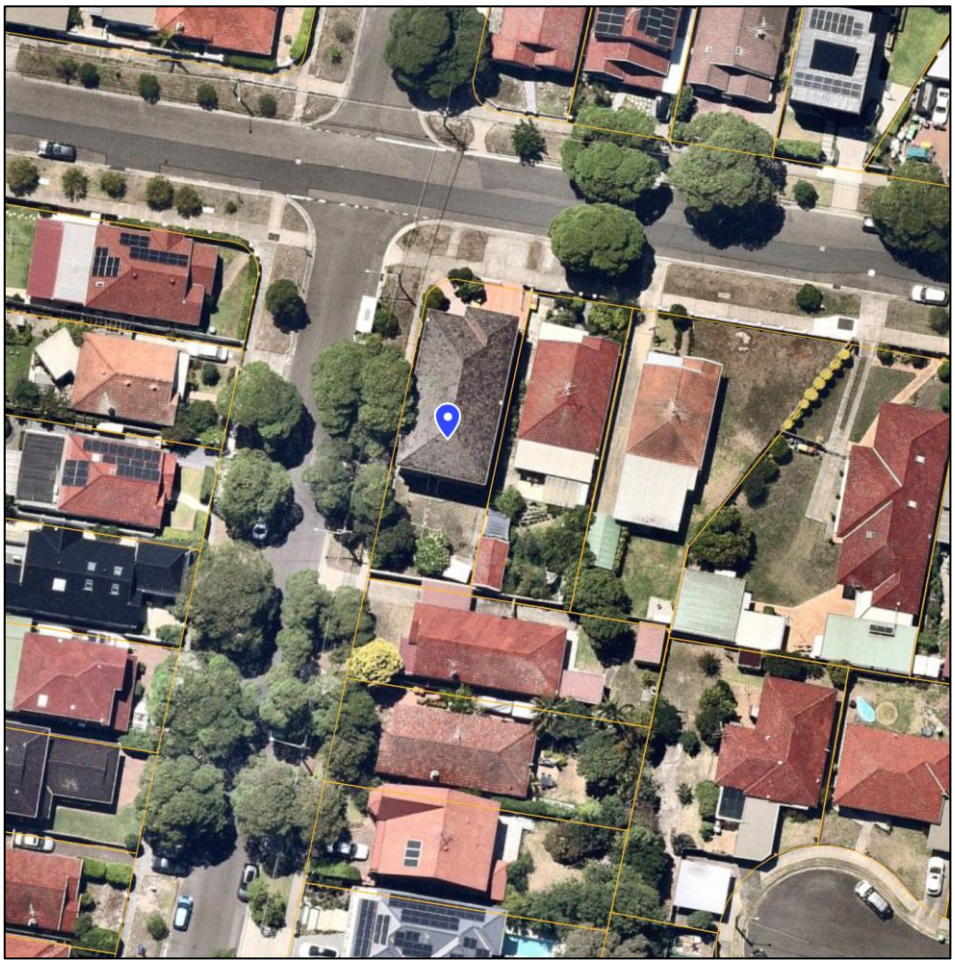


Figure 1: Aerial view of 1 Borrodale Road, Kingsford *(Nearmap)*



Figure 2: View of subject site from intersection of Borrodale Road & Leonard Avenue *(Council's Assessing Officer)*



Figure 3: Streetview of existing dwelling and double garage *(Council's Assessing Officer)*



Figure 4: Streetview of neighbouring development across the road from subject site at 2 & 4 Borrodale Road *(Google Maps)*



Figure 5: Streetview of neighbouring development adjacent to subject site at 3 & 5 Borrodale Road *(Google Maps)*

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.

4. Proposal

The proposal seeks development consent for *conversion of an existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works.*

Specifically, the proposal seeks:

Ground Floor

- Retention of previously unauthorised internal alterations associated with the change of use to a boarding house, noting that works have already been physically carried out on site. Extent of these works are outlined below:
  - Formal living area has been partitioned and converted into two (2) separate bedrooms.
  - Casual living area has been partitioned and converted into two (2) separate bedrooms.
  - Formal dining area has been converted into a bedroom.
  - Kitchen walls have been removed for provision of communal living.
  - The rear laundry and toilet have been provided with an additional toilet (Additional toilet is incorrectly identified on current and proposed plans as "store").

- Internal alterations to the unauthorised works on the ground floor including reduction of converted bedrooms (formerly casual and formal living areas) from (4) four to (3) three.

First Floor

- Retention of previously unauthorised internal alterations associated with the change of use to a boarding house, noting that works have already been physically carried out on site. Extent of these works are outlined below:
  - Walk in wardrobe within the masterbedroom has been converted into a kitchen with associated storage and sink.
  - Additional kitchenette has been installed adjacent to family area (kitchenette is incorrectly identified on current and proposed plans as "storage").
  - Bathroom has been partitioned and converted into a laundry with (2) two separate spaces each accommodating a toilet and shower.

- There are no proposed physical works to the first floor. Any works labelled as “proposed” have been compeleted prior to any development consent.

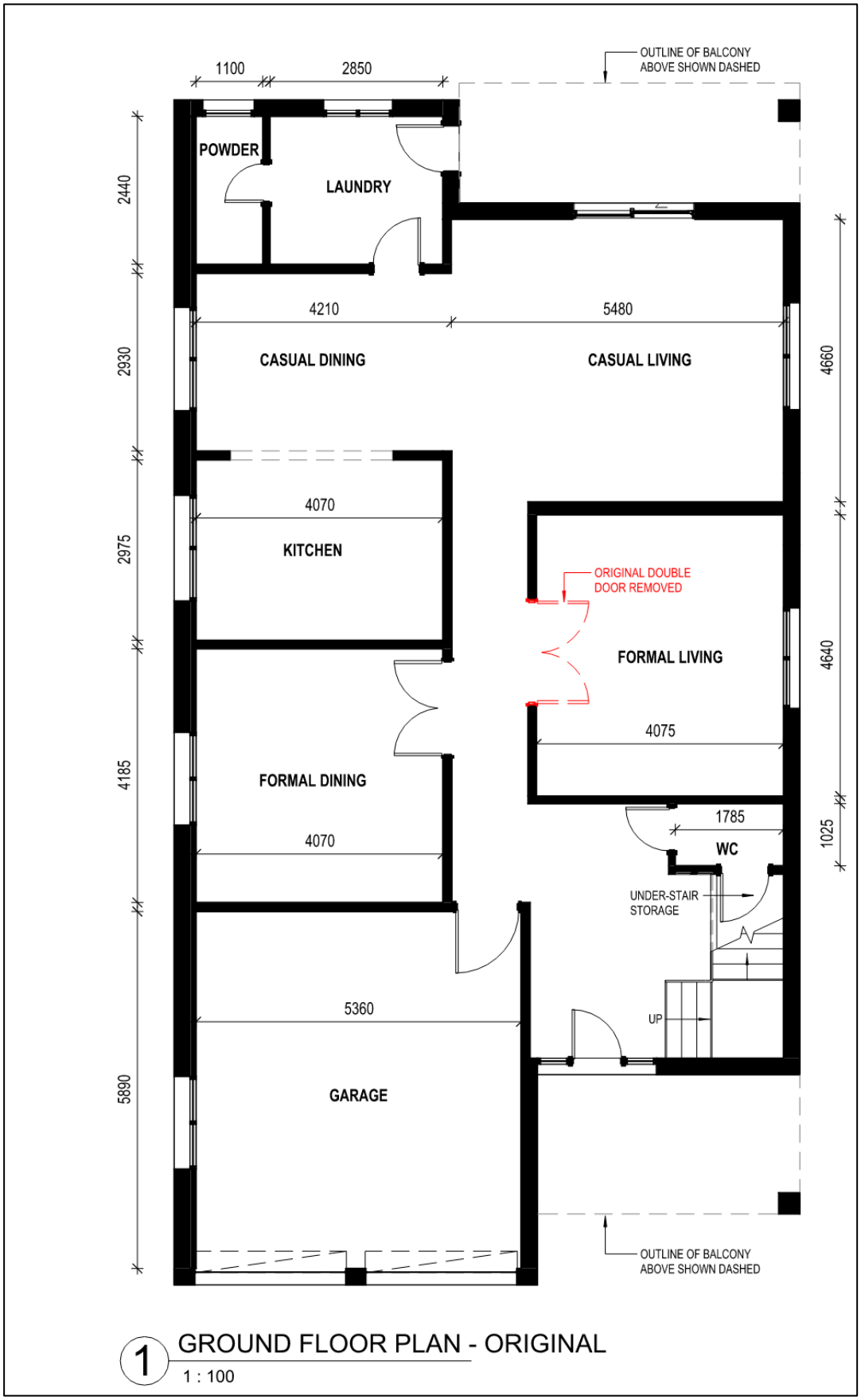


Figure 6: Original ground floor plan prior to any unauthorised works *(Connatus Pty Ltd)*

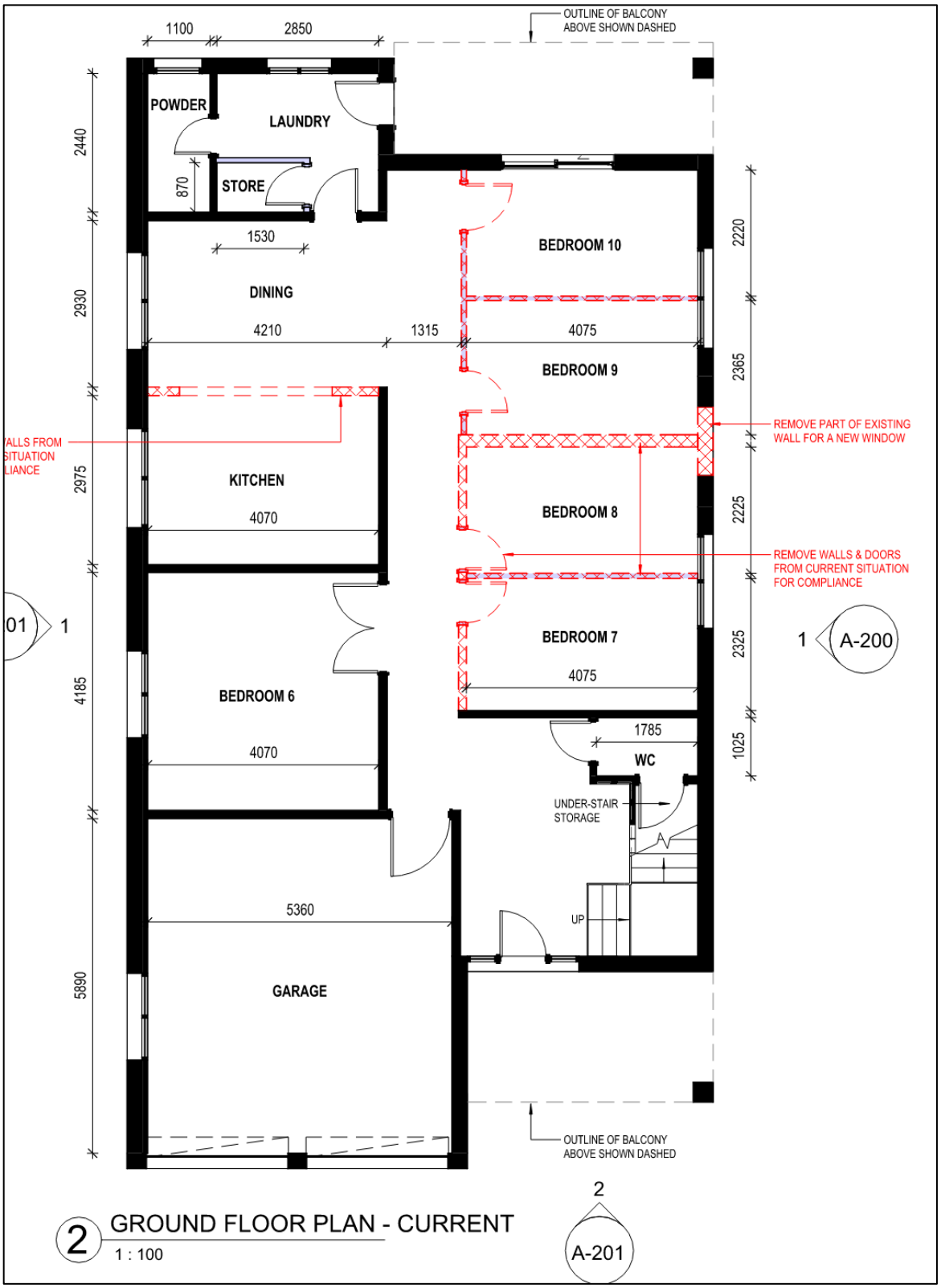


Figure 7: Current ground floor following unauthorised works – Noting the area to the rear identified as “store” is incorrect. Physically this space is an additional toilet. *(Connatus Pty Ltd)*

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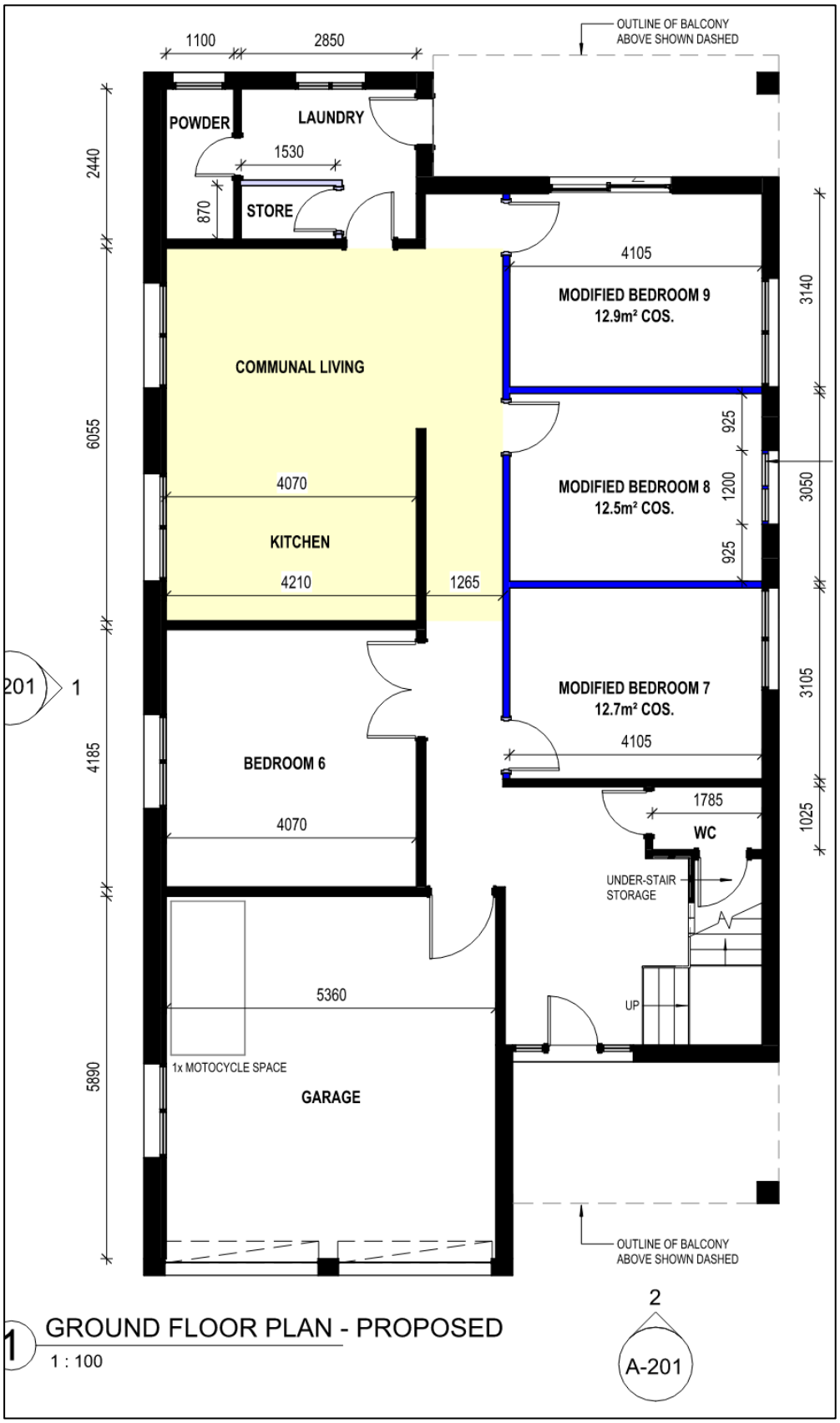


Figure 8: Proposed ground floor plan illustrating area proposed for communal living area and the reduction in unauthorised bedrooms - Noting the area to the rear identified as “store” is incorrect. Physically this space is an additional toilet. *(Connatus Pty Ltd)*

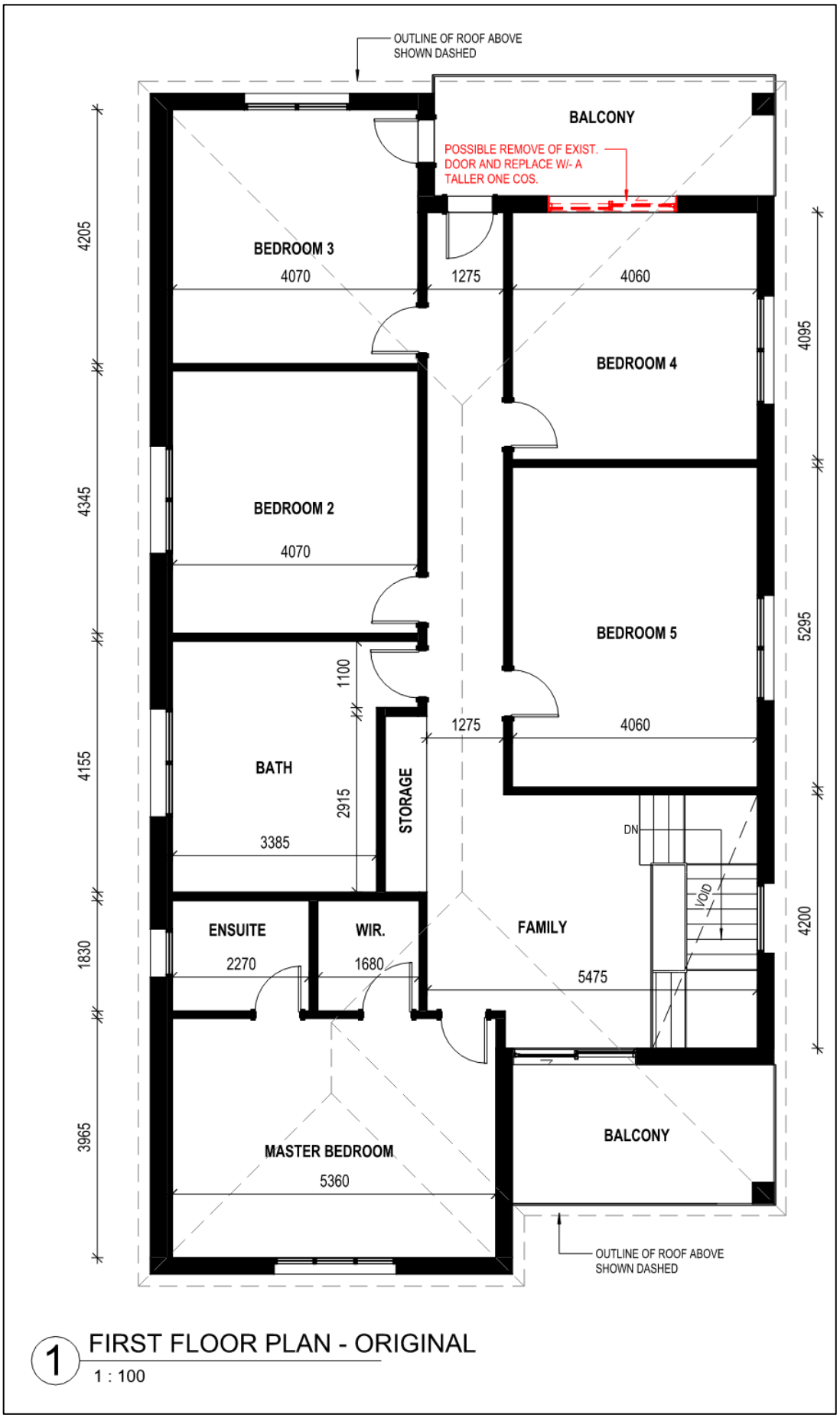


Figure 9: Original first floor plan prior to any unauthorised works *(Connatus Pty Ltd)*

D42/26

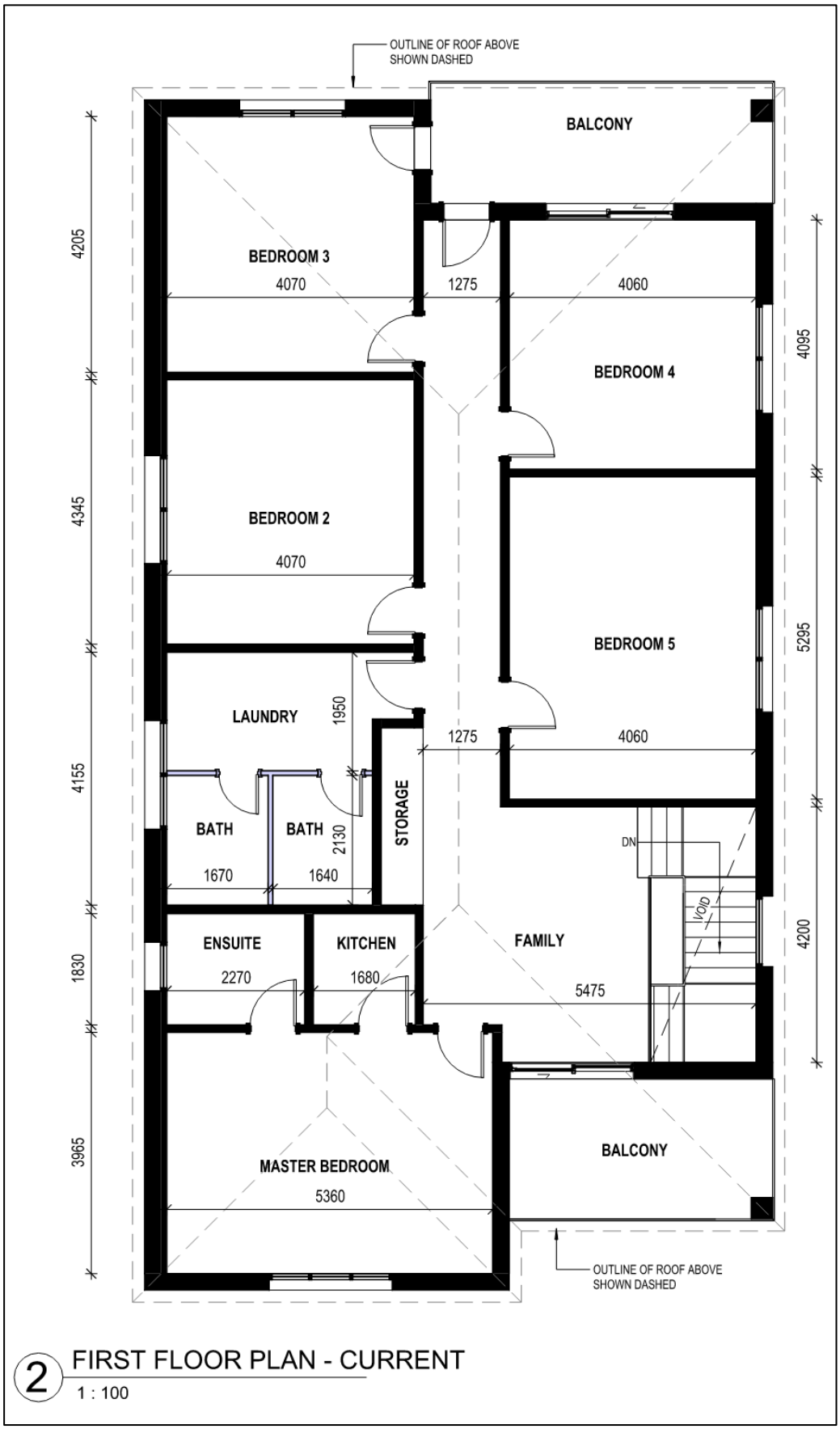


Figure 10: Current first floor following unauthorised works – Noting the space adjacent to the family area identified as “storage” is incorrect. Physically this space is a kitchenette. *(Connatus Pty Ltd)*

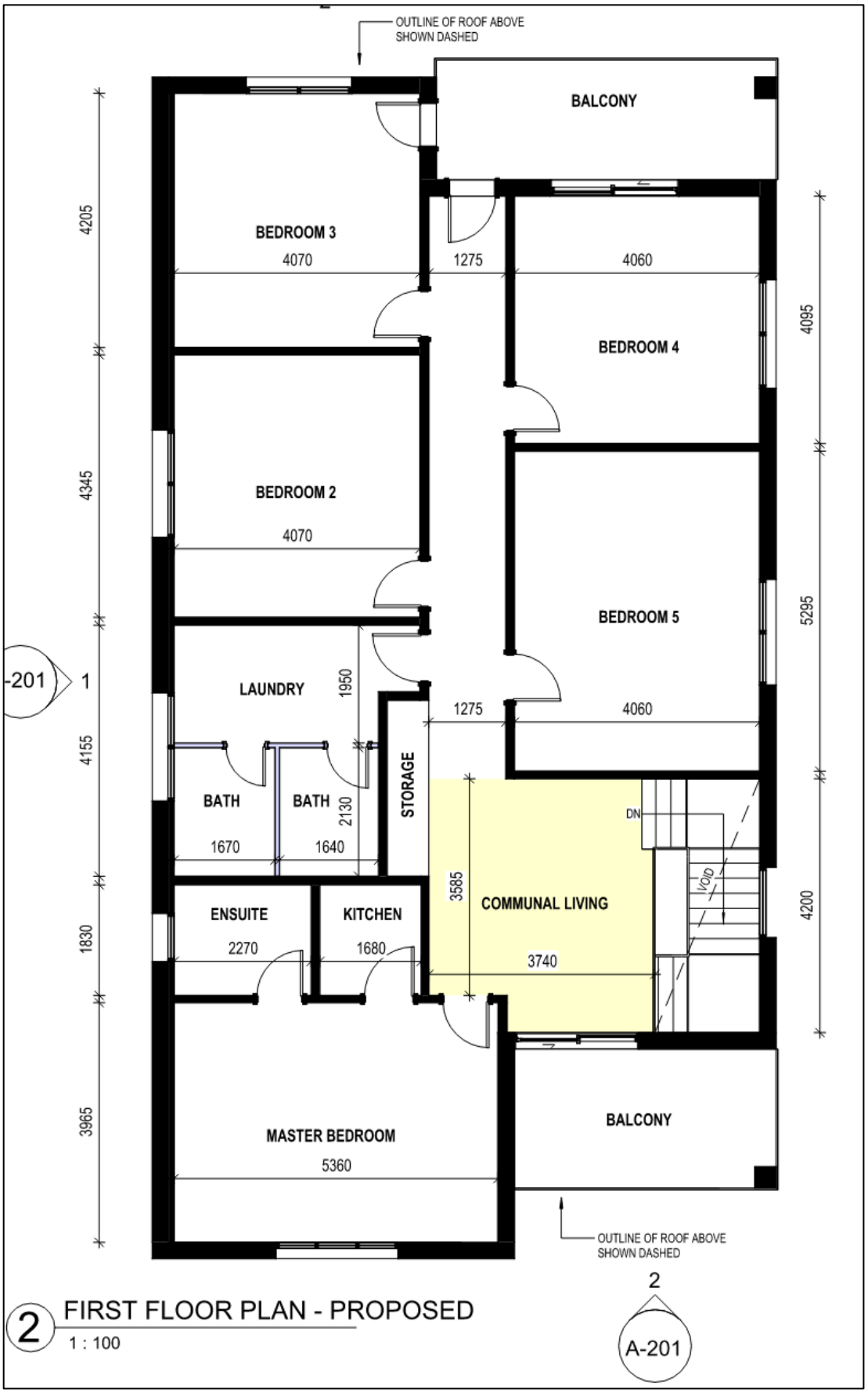


Figure 11: Proposed ground floor plan illustrating area proposed for communal living area - Noting the space adjacent to the communal living area identified as “storage” is incorrect. Physically this space is a kitchenette. *(Connatus Pty Ltd)*

D42/26

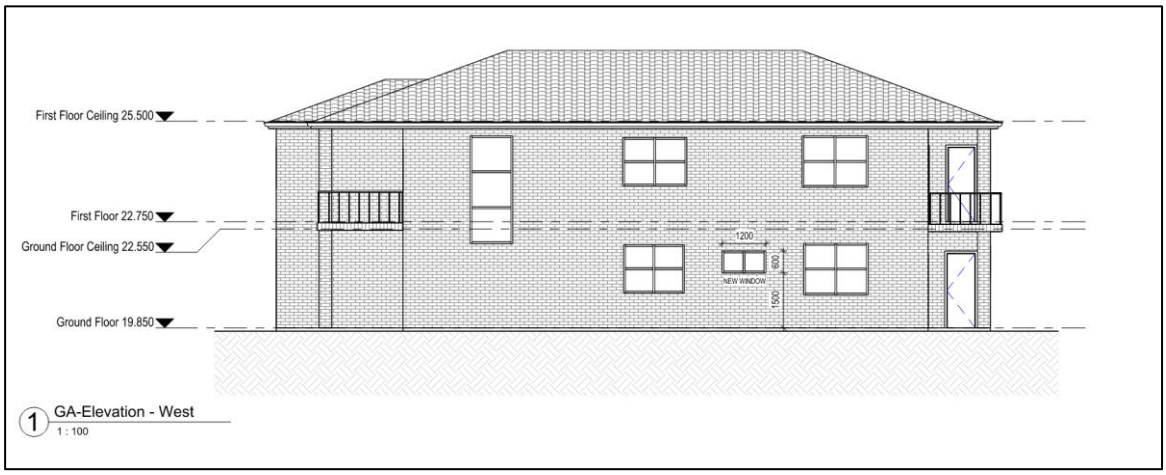


Figure 12: West elevation plan *(Connatus Pty Ltd)*



Figure 13: South elevation plan *(Connatus Pty Ltd)*

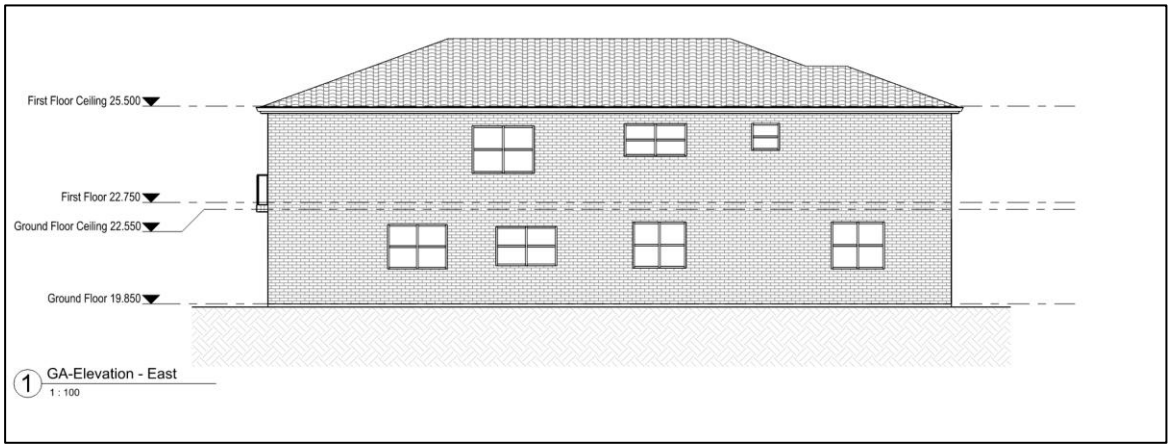


Figure 14: East elevation plan *(Connatus Pty Ltd)*



Figure 15: North elevation plan *(Connatus Pty Ltd)*



Figure 16: Area identified as ground floor communal living area – Entirety of this space is required to be excluded from communal living area calculation as space is clearly designated as circulation space granting passage to and from habitable spaces. *(Council's Assessing Officer)*

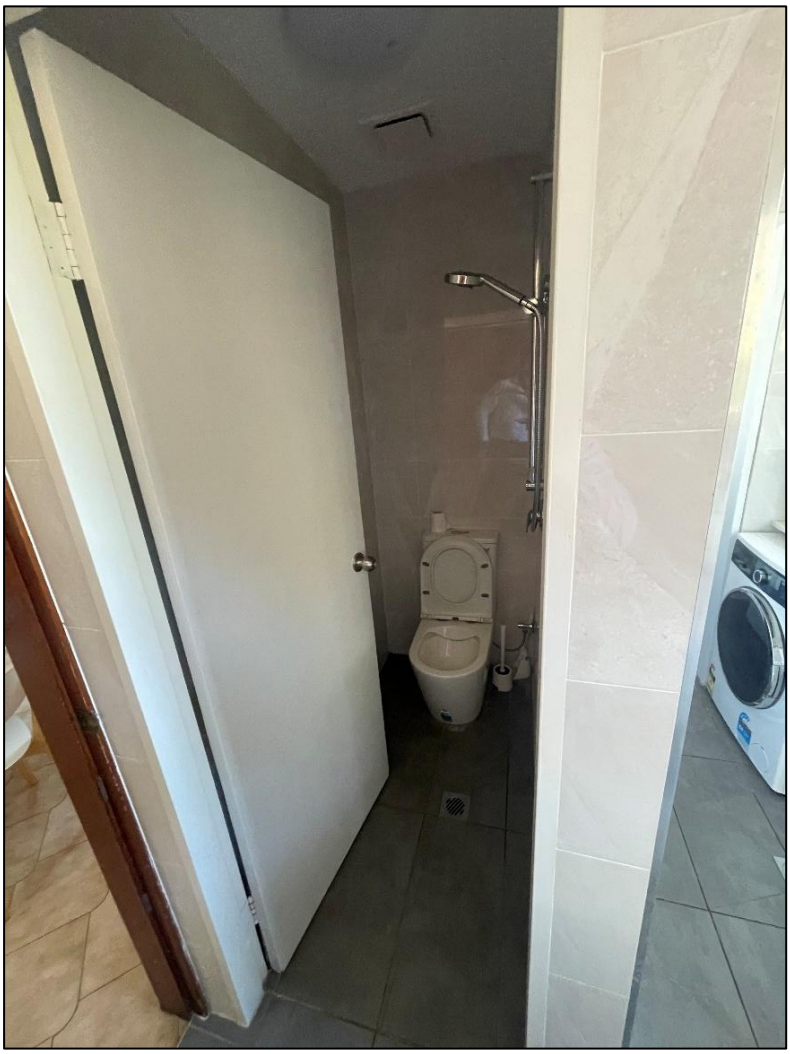


Figure 17: Room incorrectly identified on all ground floor plans as “storage” – Space operating as a bathroom with a visible toilet and showerhead. *(Council’s Assessing Officer)*



Figure 18: Space incorrectly identified on first floor plans as “storage” – Space operating as a kitchenette *(Council’s Assessing Officer)*



Figure 19: First floor master bedroom walk in wardrobe converted into a kitchen. *(Council's Assessing Officer)*



Figure 20: Area identified as first floor communal living area – Inclusion of circulation space from stairs visible. *(Council's Assessing Officer)*

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:

- **8 Borrodale Road, Kingsford**
- **Anonymous Submission**

Issue	Comment
8 Borroddale Road	
Overconcentration of student accommodation – The submitter makes reference to the quantity of comparable student accommodation within the suburb of Kingsford via dwelling uses including boarding houses.	The submission is noted. However, 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 boarding house 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.
Incompatibility with streetscape – The submitter notes the intensification of the dwelling use will increase noise, traffic, parking pressure and general activity. It is claimed the proposed development is not consistent with the low-density residential character of the street.	The submission is noted. One of the key grounds for recommending refusal is the application's insufficient documentation including absence of an acoustic report which prevents assessment of internal and external noise impacts.
Ongoing Property Maintenance – The submitter raises concerns with the condition and upkeep of the property, noting that it is frequently ill maintained and untidy. The submitter claims that approval of this sue would deteriorate the amenity and neighbourhood standards.	The submission is noted. However, 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. The cumulative effect of the non-compliances results in substandard amenity and inconsistency with the R2 Low Density Residential zone.
Anonymous	
Acoustic Impacts – The submitter raises concerns with potential upkeep and acoustic impacts should the proposed development be supported.	The submission is noted. One of the key grounds for recommending refusal is the application's insufficient documentation including absence of an acoustic report which prevents assessment of internal and external noise impacts.

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

Chapter 2 – Affordable Housing – Boarding Houses

Chapter 2, Division 2 of the Housing SEPP relates to development for the purpose of boarding houses. An assessment of the proposal against the relevant standards is provided in the table below.

Standard	Proposal	Compliance
Part 2: Boarding houses		
23 Boarding houses permitted with consent		
(1) Development for the purposes of boarding houses may be carried out with consent on land on which development for the purposes of boarding houses is permitted with consent under another environmental planning instrument.	Boarding Houses are permitted with development consent under RLEP 2012 in the R2 Zone.	Complies
(2) Development for the purposes of a boarding house must not be carried out on land in Zone R2 Low Density Residential or an equivalent land use zone unless— (a) for land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City—the land is within an accessible area, or (b) otherwise—all or part of the boarding house is within 800m walking distance of land in Zone E1 Local Centre, Zone MU1 Mixed Use, Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B4 Mixed Use, or an equivalent land use zone.	The subject site is identified as being an accessible area.	Complies.
24 Non-discretionary development standards—the Act, s 4.15		
(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—		
(a) for development in a zone in which residential flat buildings or shop top housing 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 30% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the boarding house,	Residential flat buildings are permitted on the subject site due to its location within the *low and mid-rise housing area.* The maximum Floor Space Ratio permitted under the RLEP 2012 is 0.5:1. An additional 30% enables an FSR ratio of 0.65:1 The proposed FSR is 0.64:1 (284m^2)	Complies
(b) if paragraph (a) does not apply—a floor space ratio that is not more than the maximum permissible floor space ratio for residential accommodation on the land,	N/A	N/A
(c) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping	The minimum landscape requirements are derived from the C2 – Medium Density DCP, requiring	No. Clause 4.6 is not supported as detailed

Standard	Proposal	Compliance
Part 2: Boarding houses		
requirements for multi dwelling housing under a relevant planning instrument,	50% of the site area to be landscaped open area. A proficient landscape plan is absent from supporting documentation. Submitted SEE and Site Plan indicate a landscaped area of 178m^2 (40%)	in this report.
(d) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument,	N/A	N/A
(e) at least 3 hours of direct solar access provided between 9am and 3pm at mid-winter in at least 1 communal living area,	No shadow diagrams submitted with application. Clause 4.6 and submitted SEE detail a non-compliance by communal living areas only achieving 1 hour of direct solar access. A 66% variation.	No. Clause 4.6 is not supported as detailed in this report.
(f) for a boarding house containing 6 boarding rooms— (i) a total of at least 30m2 of communal living area, and (ii) minimum dimensions of 3m for each communal living area,	N/A	N/A
(g) for a boarding house containing more than 6 boarding rooms— (i) a total of at least 30m2 of communal living area plus at least a further 2m2 for each boarding room in excess of 6 boarding rooms, and (ii) minimum dimensions of 3m for each communal living area,	Proposal has 9 boarding rooms. Required communal living area = 36m^2 Proposed communal living area = 30.2m^2 Proposed communal living areas measured incorrectly by way of including circulation space. No Clause 4.6 submitted justifying variation.	No
(h) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	88.4m^2 required. The proposal satisfies this requirement.	Complies
(i) if a relevant planning instrument does not specify a requirement for a lower number of parking spaces—at least the following number of parking spaces—	1.8 spaces required. The site's existing parking arrangement exceeds this threshold.	Complies

Standard	Proposal	Compliance
Part 2: Boarding houses		
(i) for development on land within an accessible area—0.2 parking spaces for each boarding room, (ii) otherwise—0.5 parking spaces for each boarding room,		
(j) if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument.	N/A	N/A
25 Standards for boarding houses		
(1) Development consent must not be granted under this Division unless the consent authority is satisfied that—		
(a) no boarding room will have a gross floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of more than 25m^2, and (b) no boarding room will be occupied by more than 2 adult residents, and	Largest proposed boarding has a GFA of 21m^2. Proposed rooms not designed to house more than 2 residents.	Complies
(c) adequate bathroom, kitchen and laundry facilities will be available within the boarding house for the use of each resident, and	The 12m^2 kitchen on the ground floor is the only kitchen facility offering stove top cooking. The first-floor kitchenette is 2m^2 and lacks adequate facilities with only a benchtop, shelving, fridge and microwave provided. This is expected to service a minimum 4 residents. The master bedroom kitchen is 3m^2 and lacks adequate facilities with only a benchtop, shelving, fridge and microwave provided. This is to service the 2 occupants of the master bedroom. A 12m^2 operational communal kitchen on the ground floor for 9 private rooms is not considered adequate to service the intensity of the boarding use.	No
(d) for a boarding house on land in Zone R2 Low Density Residential or an equivalent land use zone—the boarding house will not have more than 12 boarding rooms, and	The proposal has 9 boarding rooms.	Complies
(e) for a boarding house on land in a business zone—no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and	N/A	N/A

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Standard	Proposal	Compliance
Part 2: Boarding houses		
(f) for a boarding house containing at least 6 boarding rooms—the boarding house will have at least 1 communal living area, and	X2 communal living areas provided. Although they do not comply with minimum dimension requirements.	Complies
(g) the minimum lot size for the boarding house 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. (iii) (Repealed)	The lot size is 442.9m^2, which is a variation of 157m^2.	No. Clause 4.6 is not supported as detailed in this report.
(h) each boarding room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of at least the following— (i) for a boarding room intended to be used by a single resident—12m^2, (ii) otherwise—16m^2, and	Proposed boarding rooms satisfy these criteria.	Complies
(i) the boarding house will include adequate bicycle and motorcycle parking spaces.	9 bicycle spaces shown in rear setback area. 1 motorcycle space shown within garage, although this space is currently being utilised as storage.	Yes
(2) Development consent must not be granted under this Division unless the consent authority considers whether—		
(a) the design of the boarding house 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, and	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 Boarding House development standards. Approving this use would set an undesirable precedent.	No
(b) the front, side and rear setbacks for the boarding house 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, (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument,	The setbacks are proposed to remain as existing.	Acceptable
(c) if the boarding house has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide.	Thee proposal is for two stories.	N/A
26 Must be used for affordable housing in perpetuity		

Standard	Proposal	Compliance
Part 2: Boarding houses		
(1) Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity— (a) the boarding house will be used for affordable housing, and (b) the boarding house will be managed by a registered community housing provider. NB: this does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.	A letterhead from a registered community housing provider who will manage the boarding house, has not been provided. The Applicant has indicated that they are engaging *City West Housing* to act as the community housing provider. This is not sufficient. The submitted Plan of Management does not detail this arrangement and does address affordable housing.	No
27 Subdivision of boarding houses not permitted		
Development consent must not be granted for the subdivision of a boarding house.	No subdivision proposed.	Complies

6.2. SEPP (Sustainable Buildings) 2022

No Basix Certificate is required for Boarding House development.

6.3. SEPP (Biodiversity and Conservation) 2021

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

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

The proposed development does not involve the removal of any vegetation (including any trees).

6.4. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

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

The subject site has only previously been used for residential 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.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

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The site is zoned R2 Low Density Residential 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)	0.5:1	0.64:1	No
Cl 4.3: Building height (max)	9.5m	7.8m (Existing)	Yes
Cl 4.1: Lot Size (min)	275m^2	442.9m^2	Yes

The proposal's non-compliance with Cl 4.4: Floor Space Ratio of *Randwick Local Environmental Plan 2012* is irrelevant as the *State Environmental Planning Policy (Housing) 2021*'s FSR requirements supersede that of RLEP 2012.

The proposal's compliance with Cl 4.1: Lot Size of *Randwick Local Environmental Plan 2012* is irrelevant as the *State Environmental Planning Policy (Housing) 2021*'s minimum lot size requirements supersede that of RLEP 2012.

6.5.1. Clause 4.6 - Exceptions to development standards
The non-compliances with the development standards are discussed in section 7 below.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 24(2)(c): Landscaped area	50% of site area = 221.4m^2	40% of site area = 178m^2	43.4m^2	19.6%
Cl 24(2)(e): Solar access	3-hour direct solar access	1-hour direct solar access	2-hour shortfall	66%
Cl 24(2)(g)(i): Communal living area	36m^2	30.21m^2	5.7m^2	16%
Cl 25(1)(g)(i): Minimum lot size	600m^2	442.9m^2	157.1m^2	26.1%

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 Minimum Landscaped Area development standard (Cl 24(2)(c)) of the SEPP (Housing) 2021.

The Applicant's written justification for the departure from the Minimum 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 Minimum Landscaped Area development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

   There are no objectives 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 Applicant's written justification seeks to demonstrate that these objectives are satisfied by noting that:

(a) The Proposal provides boarding house development in an area traditionally containing detached dwellings and residential flat buildings to provide diversity in accommodation types.

The Proposal is consistent with this objective, notwithstanding the variation.

(b) The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents.

The Proposal is consistent with this objective, notwithstanding the variation.

(c) The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants.

The Proposal provides 178sqm or 41.1% of the Site as landscaped area which provides significant amenity to future occupants. 103sqm of the landscaped area is provided as communal open space.

The Proposal is consistent with this objective, notwithstanding the variation.

(d) The Proposal is located within an accessible area as defined by the Housing SEPP. The Proposal utilises the accessible location of the Site to provide additional accommodation in an area well services by public transport, shops, educational establishments, and employment opportunities.

The Proposal is consistent with this objective, notwithstanding the variation

(e) The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the impact of the change of use on the climate and environment is minimal.

The Proposal is consistent with this objective, notwithstanding the variation.

(f) The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the design of the building remains consistent with the prevailing character of the area.

The Proposal is consistent with this objective, notwithstanding the variation.

(g) The Proposal will have a positive impact on the social, economic and environmental attributes of the Randwick City LGA.

The Proposal is consistent with this objective, notwithstanding the variation.

(h) The Proposal encourages affordable housing and therefore is consistent with this objective, notwithstanding the variation.

This Variation Request has adopted the first test in Wehbe to establish that compliance is unreasonable or unnecessary because the objectives of the landscaped area development standard are satisfied notwithstanding the variation, as follows:

- *The Proposal seeks to substantially retain the existing built form, with minor intervention required to convert the dwelling house to a boarding house. The existing building is consistent with the desired future character for the Site, however the change of use to a boarding house requires more onerous landscaped area requirements that the existing use. Notwithstanding, the Proposal provides 178sqm or 41.1% of the Site as landscaped area which provides significant amenity to future occupants. 103sqm of the landscaped area is provided as communal open space. Compliance with the non-discretionary development standard would require demolition of part of the existing building to achieve the standard which would not achieve a better planning outcome.*
- *The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it provides for a scale of development that*

when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in retaining the existing dwelling house but whilst providing additional housing is consistent with the character of the area.

- *The Proposal can accommodate a boarding house that does not result in adverse amenity impacts on adjoining development, despite the landscaped area provided.*

In view of the circumstances of the Proposal, strict compliance with Clause 24(2)(c) of the Housing SEPP is considered to be both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 24(2)(c) of the Housing SEPP as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

The existing building will retain compatibility with surrounding development and continue to support the residential nature of the Site whilst increasing housing supply in the area, consistent with the objectives of the R2 Low Density Residential zone.

Assessing Officer's comment:
Council does not accept the Applicant's position. The proposed "conversion of use" cannot be characterised as a minor intervention, as substantial works associated with the conversion have already been undertaken without prior development consent. These unauthorised works materially alter the assessment context and undermine the validity of the Applicant's justification.

Council maintains that the minimum landscaped area requirement is a fundamental and deliberate policy control. Its purpose is to ensure that boarding house developments provide an appropriate level of landscaped open space to support residential amenity, mitigate built form impacts, and contribute positively to the character of the locality. A significant shortfall in landscaped area directly compromises these intended outcomes.

The Applicant's reliance on the retention of the existing dwelling house envelope is misplaced. Boarding houses constitute a distinct land use with materially different operational characteristics, occupancy levels, and amenity demands compared to a single dwelling house. The absence of additional built form does not negate the increased functional requirements of the use, nor does it justify a substantial departure from the landscaped area standard. The intensity of boarding house occupation inherently generates greater demand for communal open space, visual relief, and amenity buffers.

The arguments advanced by the Applicant focus primarily on site constraints and the desire to retain existing site characteristics. These matters do not demonstrate that the development standard itself is unreasonable or unnecessary as it applies to this land. Site constraints are not, in themselves, sufficient grounds to vary a fundamental planning control, particularly where the non-compliance would result in diminished amenity outcomes.

In conclusion, the Applicant's written request fails to adequately demonstrate that strict compliance with the landscaped area development standard is unreasonable or unnecessary in the circumstances of the case. The justification does not establish sufficient environmental planning grounds to support the variation, nor does it demonstrate that the objectives of the standard are achieved despite the non-compliance.

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

The Applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the minimum landscaped area development standard as follows:

The Variation Request is considered well founded because, notwithstanding the proposed variation to the minimum landscaped area, there are sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard, as follows:

- *The proposed lot size is consistent with the underlying objective or purpose of the standard as demonstrated in Section 0.*

- *The proposed lot size is consistent with the objectives of the R2 Low Density Residential zone as described in Section 5.*

- *Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 0.*

- *The Proposal is entirely compliant with the provisions of the Randwick Development Control Plan 2013 (RDCP 2013) in the following manner:*

- *The Proposal provides compliant front, side, and rear boundary setbacks;*
- *The Proposal complies with the maximum building height and FSR controls and therefore presents a built form and scale that is consistent with the intention of the controls and will not result in amenity impacts of excessive bulk and scale to any adjoining properties.*
- *There are no unreasonable acoustic or visual privacy impacts as a result of the Proposal, and the Proposal complies with Council's overshadowing and visual bulk controls.*

- *The Proposal would remain compatible with residential land uses in light of the above.*

For the reasons outlined above, it is considered that the variation to the landscaped area non-discretionary development standard under Clause 24(2)(c) of the Housing SEPP is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under RLEP 2012.

Assessing Officer's comment:
Council does not consider that the environmental planning grounds advanced by the Applicant are sufficient to justify the contravention of the development standard. The justification provided does not demonstrate that the objectives of the standard are achieved despite the non-compliance, nor does it establish any site-specific circumstances that warrant a departure of the magnitude proposed.

The Applicant's assertion that the proposal is fully compliant with the Randwick Development Control Plan 2013 (RDCP 2013) is incorrect. The proposal does not comply with the applicable floor space ratio (FSR) controls, as acknowledged by the Applicant. The apparent compliance arises only because the development benefits from the 30% FSR bonus permitted under the State Environmental Planning Policy (Housing) 2021. This does not constitute compliance with Council's controls, nor does it support the argument that the development standard for landscaped area is unreasonable or unnecessary.

The landscaped area control is a critical planning mechanism intended to manage the cumulative amenity and environmental impacts associated with boarding house development. Boarding houses typically provide limited private open space, resulting in a heightened reliance on communal landscaped areas to support passive recreation, visual relief, and overall amenity. Retaining existing site conditions does not demonstrate that the standard is inappropriate, nor does it justify a significant shortfall in landscaped area. The control is designed to ensure that sites are capable of accommodating the increased intensity and functional demands of boarding house use.

Furthermore, the absence of external amenity impacts such as overshadowing or privacy impacts does not, in isolation, justify a substantial departure from a control that is fundamentally concerned with environmental quality, usability of open space, and the capacity of the site to support the proposed land use. The landscaped area standard ensures that boarding houses are located on sites that can accommodate the development in a comprehensive, orderly, and sustainable manner.

In conclusion, the Applicant's written request does not adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The justification fails to establish that the standard is unreasonable or unnecessary in the circumstances

of the case and does not demonstrate that the objectives of the control are achieved notwithstanding the non-compliance.

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 area development standard.

7.2. Exception to the solar access to communal living area development standard (Cl 24(2)(e)) of the SEPP (Housing) 2021.

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 justification for the departure from the solar access standard is contained in Appendix 2.

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

There are no objectives 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 Applicant's written justification seeks to demonstrate that these objectives are satisfied by noting that:

(a) The Proposal provides boarding house development in an area traditionally containing detached dwellings and residential flat buildings to provide diversity in accommodation types.

(b) The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents.

The Proposal is consistent with this objective, notwithstanding the variation.

(c) *The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants.*

The Proposal provides two (2) internal communal living areas, split across the two levels of the boarding house. The First-Floor level communal living area is north facing and has an attached balcony and east-facing window, providing a high level of amenity. The Ground Floor level communal living area directly adjoins the communal kitchen and has windows facing west. Given the orientation of the existing building and the desire to retain the building with minimal interventions, achieving 3 hours of continuous direct solar access to either one of the communal living areas is unachievable.

The Proposal achieves a high level of amenity for future residents as evident by the sufficiently sized boarding rooms, oversized communal outdoor area, multiple communal living areas, and two (2) balconies with different orientations. Despite achieving sufficient internal communal living areas, the Proposal also provides balconies that receive adequate solar access that comply with the requirements of Clause 24(2)(e), further improving the amenity of the boarding house for residents.

Both communal living areas receive high levels or natural daylight and ventilation, despite not achieving 3 hours of continuous direct solar access.

The Proposal is consistent with this objective, notwithstanding the variation.

(d) *The Proposal is located within an accessible area as defined by the Housing SEPP. The Proposal utilises the accessible location of the Site to provide additional accommodation in an area well services by public transport, shops, educational establishments, and employment opportunities.*

The Proposal is consistent with this objective, notwithstanding the variation.

(e) *The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the impact of the change of use on the climate and environment is minimal.*

The Proposal is consistent with this objective, notwithstanding the variation.

(f) *The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the design of the building remains consistent with the prevailing character of the area.*

The Proposal is consistent with this objective, notwithstanding the variation.

(g) *The Proposal will have a positive impact on the social, economic and environmental attributes of the Randwick City LGA.*

The Proposal is consistent with this objective, notwithstanding the variation.

(h) *The Proposal encourages affordable housing and therefore is consistent with this objective, notwithstanding the variation.*

This Variation Request has adopted the first test in Wehbe to establish that compliance is unreasonable or unnecessary because the objectives of the solar access development standard are satisfied notwithstanding the variation, as follows:

- *The Proposal seeks to substantially retain the existing built form, with minor intervention required to convert the dwelling house to a boarding house. The existing building is consistent with the desired future character for the Site. The retention of the*

existing built form results in two (2) internal communal living areas, split across the two levels of the boarding house. The First-Floor level communal living area is north facing and has an attached balcony and east-facing window, providing a high level of amenity. The Ground Floor level communal living area directly adjoins the communal kitchen and has windows facing west. Given the orientation of the existing building and the desire to retain the building with minimal interventions, achieving 3 hours of continuous direct solar access to either one of the communal living areas is unachievable.

- *The Proposal achieves a high level of amenity for future residents as evident by the sufficiently sized boarding rooms, oversized communal outdoor area, multiple communal living areas, and two (2) balconies with different orientations.*
- *Despite achieving sufficient internal communal living areas, the Proposal also provides balconies that receive adequate solar access that comply with the requirements of Clause 24(2)(e), further improving the amenity of the boarding house for residents.*
- *Both communal living areas receive high levels or natural daylight and ventilation, despite not achieving 3 hours of continuous direct solar access.*
- *The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it provides for a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in retaining the existing dwelling house but whilst providing additional housing is consistent with the character of the area.*
- *The Proposal can accommodate a boarding house that does not result in adverse amenity impacts on adjoining development, despite not achieving the solar access requirements.*

In view of the circumstances of the Proposal, strict compliance with Clause 24(2)(e) of the Housing SEPP is both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 24(2)(e) of the Housing SEPP as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

The existing building will retain compatibility with surrounding development and continue to support the residential nature of the Site whilst increasing housing supply in the area, consistent with the objectives of the R2 Low Density Residential zone.

Assessing Officer's comment:
Council does not accept the Applicant's position. A high level of amenity has not been achieved, and the Applicant's assertion that sufficient communal living areas are provided is fundamentally incorrect. The calculation improperly includes areas used for circulation, which cannot be counted as communal living space under the applicable planning controls.

The Applicant's claim that the communal living areas achieve ample solar access despite numerical non-compliance is unsubstantiated. The proposal is not supported by adequate documentation, and there is a notable absence of solar access diagrams or any technical analysis demonstrating compliance with the relevant performance outcomes. The only document addressing this matter is the written variation request, which does not identify the basis for the claimed non-compliance nor provide any evidence to support the assertion that a high level of amenity is achieved.

While the Applicant's claims are refuted on the basis that sufficient amenity is not achieved, it is also important to emphasise that the correct baseline for assessment is compliance with the applicable development standard, and not the existing site condition or the characteristics of a previously approved dwelling house. The retention of the existing built form or the avoidance of demolition does not demonstrate that the solar access standard is unreasonable or unnecessary as it applies to this land. Boarding house development carries distinct operational and amenity requirements that must be met irrespective of the existing building envelope.

In conclusion, the Applicant's written request has not adequately demonstrated that compliance with the solar access development standard is unreasonable or unnecessary in the circumstances of the case. The justification fails to establish sufficient environmental planning grounds to support

the variation and does not demonstrate that the objectives of the standard are achieved despite the non-compliance.

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 solar access development standard as follows:

The Variation Request is considered well founded because, notwithstanding the proposed variation to the minimum solar access, there are sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard, as follows:

- *The proposed lot size is consistent with the underlying objective or purpose of the standard as demonstrated in Section Error! Reference source not found..*
- *The proposed lot size is consistent with the objectives of the R2 Low Density Residential zone as described in Section 0.*
- *Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 0*
- *The Proposal is entirely compliant with the provisions of the Randwick Development Control Plan 2013 (RDCP 2013) in the following manner:*
    - *The Proposal provides compliant front, side, and rear boundary setbacks.*
    - *The Proposal complies with the maximum building height and FSR controls and therefore presents a built form and scale that is consistent with the intention of the controls and will not result in amenity impacts of excessive bulk and scale to any adjoining properties.*
    - *There are no unreasonable acoustic or visual privacy impacts as a result of the Proposal, and the Proposal complies with Council's overshadowing and visual bulk controls.*
- *The Proposal would remain compatible with residential land uses in light of the above.*

For the reasons outlined above, it is considered that the variation to the solar access non-discretionary development standard under Clause 24(2)(e) of the Housing SEPP is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under RLEP 2012.

Assessing Officer's comment:
It is unclear what the Applicant is referring to when citing "Section 0" and "Section Error." These references appear to be formatting or drafting errors, and similar inconsistencies are evident in other written variation requests submitted with the proposal. This lack of clarity undermines the reliability and coherence of the Applicant's justification.

Council does not accept the Applicant's position. The Applicant cannot rely on an assumption that there are no unreasonable acoustic or privacy impacts when no complete or rigorous assessment of these matters has been provided. In the absence of an acoustic report or any substantive analysis, the claim that impacts are acceptable is unfounded and cannot be given weight in the assessment process.

The environmental planning grounds advanced do not adequately address the operational impacts of the development, nor do they meaningfully engage with the implications of the solar access non-compliance. The justification fails to demonstrate that the proposed departure from the standard can be accommodated without adverse effects on the amenity of future occupants. Assertions unsupported by technical evidence cannot satisfy the requirement to establish sufficient environmental planning grounds.

In conclusion, the Applicant's written request does not adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The variation request lacks clarity, supporting evidence, and a robust assessment of the amenity impacts arising from the non-compliance.

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 solar access development standard.

7.3. Exception to the communal living area development standard (Cl 24(2)(g)(i))

The Applicant has failed to provide a written request to vary the Communal Living Area non-discretionary development standard applying to the site under Cl 24(2)(g)(i) of the *State Environmental Planning Policy (Housing) 2021*.

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 that development consent may not be granted for development that contravenes the Communal living area development standard.

7.4 Exception to the Housing SEPP Boarding house Minimum Lot Size development standard Cl 25(1)(g)(i)

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 by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

There are no objectives relating specifically to the 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 Applicant's written justification seeks to demonstrate that these objectives are satisfied by noting that:

(a) The Proposal provides boarding house development in an area traditionally containing detached dwellings and residential flat buildings to provide diversity in accommodation types.

The Proposal is consistent with this objective, notwithstanding the variation.

(b) The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents.

The Proposal is consistent with this objective, notwithstanding the variation.

(c) The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants.

The Proposal is consistent with this objective, notwithstanding the variation.

(d) The Proposal is located within an accessible area as defined by the Housing SEPP. The Proposal utilises the accessible location of the Site to provide additional accommodation in an area well services by public transport, shops, educational establishments, and employment opportunities.

The Proposal is consistent with this objective, notwithstanding the variation.

(e) The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the impact of the change of use on the climate and environment is minimal.

The Proposal is consistent with this objective, notwithstanding the variation.

(f) The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the design of the building remains consistent with the prevailing character of the area.

The Proposal is consistent with this objective, notwithstanding the variation.

(g) The Proposal will have a positive impact on the social, economic and environmental attributes of the Randwick City LGA.

The Proposal is consistent with this objective, notwithstanding the variation.

(h) The Proposal encourages affordable housing and therefore is consistent with this objective, notwithstanding the variation.

This Variation Request has adopted the first test in Wehbe to establish that compliance is unreasonable or unnecessary because the objectives of the Minimum Lot Size development standard are satisfied notwithstanding the variation, as follows:

- *When considering whether the Site is adequately sized, matters such as internal amenity, environmental impacts, consistency with the character of the area, and provision of services are all relevant considerations. The Proposal is considered to be adequately sized as the development is capable of complying with all relevant development standards of the Housing SEPP and provides a high level of internal amenity of future residents.*
- *The existing allotment is undersized as result of historic subdivisions before the Housing SEPP came into force. Various other forms of residential development could be proposed on the Site and would be subject to similar development controls.*
- *The subdivision pattern of the locality varies with a variety of allotment shapes and sizes existing currently and the existing allotment is consistent with the character of the area.*

- *The development retains the existing building and adaptively re-uses the existing built form to allow for an increase in housing.*
- *The Proposal provides for the housing needs of the community within a low-density residential environment by providing boarding house development which retains the existing built form and is low density in nature.*
- *The proposal provides for an intensity of development that is capable of being serviced by the existing infrastructure.*
- *The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it provides for a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in retaining the existing dwelling house but whilst providing additional housing is consistent with the character of the area.*
- *The Proposal can accommodate a boarding house that does not result in adverse amenity impacts on adjoining development, despite the small lot size.*

In view of the circumstances of the Proposal, strict compliance with Clause 25(1)(g)(i) of the Housing SEPP is considered to be both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 25(1)(g)(i) of the Housing SEPP as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

The existing lot size will retain compatibility with surrounding development and continue to support the residential nature of the Site whilst increasing housing supply in the area, consistent with the objectives of the R2 Low Density Residential zone.

Assessing Officer's comment:
Council does not accept the Applicant's position. The minimum lot size requirement is a fundamental policy control intended to ensure that boarding house development is limited to sites capable of accommodating the increased intensity, operational demands, and amenity expectations associated with this land use. The Applicant has not demonstrated why a site with an area of 442.9m² is suitable for a development type that is expressly required to have a minimum site area of 600m². No evidence has been provided to show that the site can appropriately support the functional, spatial, and amenity needs of boarding house accommodation.

The Applicant's reliance on the retention of the existing dwelling house envelope is misplaced. Boarding housing is a distinct land use with materially different occupancy levels, operational characteristics, and amenity requirements compared to a single dwelling house. The absence of additional built form does not mitigate the increased functional demands generated by the proposed use, nor does it justify a substantial shortfall in the minimum lot size. The development standard exists precisely to ensure that boarding houses are located on sites capable of accommodating these heightened demands.

The constraints identified by the Applicant, including historic subdivision patterns, are not unique to the subject site and are common across established residential areas. Such constraints do not demonstrate that the development standard is unreasonable or unnecessary as it applies to this land. Planning controls are intentionally designed to manage development capacity within these established contexts, and site constraints alone do not constitute sufficient grounds to vary a fundamental standard.

In conclusion, the Applicant's written request has not adequately demonstrated that compliance with the minimum lot size development standard is unreasonable or unnecessary in the circumstances of the case. The justification fails to establish sufficient environmental planning grounds to support the variation and does not demonstrate that the objectives of the standard are achieved despite the non-compliance.

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

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

The Variation Request is considered well founded because, notwithstanding the proposed variation to the Minimum Lot Size, there are sufficient environmental planning grounds to justify the contravention of the development standard, as follows:

- The proposed lot size is consistent with the underlying objective or purpose of the standard as demonstrated in Section 4.
- The proposed lot size is consistent with the objectives of the R2 Low Density Residential zone as described in Section 5.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 6
- The Proposal is entirely compliant with the provisions of the Randwick Development Control Plan 2013 (RDCP 2013) in the following manner:
    - The Proposal provides compliant front, side, and rear boundary setbacks.
    - The Proposal complies with the maximum building height and FSR controls and therefore presents a built form and scale that is consistent with the intention of the controls and is not considered to result in amenity impacts of excessive bulk and scale to any adjoining properties.
    - There are no unreasonable acoustic or visual privacy impacts as a result of the Proposal, and the Proposal complies with Council's overshadowing and visual bulk controls.
- The Proposal would remain compatible with residential land uses in light of the above.

For the reasons outlined above, it is considered that the variation to the Minimum Lot Size development standard under Clause 25(1)(g)(i) of the Housing SEPP is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under RLEP 2012.

Assessing Officer's comment:
Council does not consider that the environmental planning grounds advanced by the Applicant are sufficient to justify the contravention of the development standard. The justification does not demonstrate that the objectives of the standard are achieved despite the non-compliance, nor does it identify any site-specific circumstances that warrant a departure.

The Applicant's comparison to a dwelling house approved under a separate planning pathway is inappropriate. Boarding housing accommodates a significantly higher number of residents and relies heavily on shared facilities. These characteristics inherently require more generous site dimensions, not reduced ones. The functional and amenity demands of boarding house accommodation cannot be equated with those of a single dwelling house, and the comparison does not support the argument that the development standard is unreasonable or unnecessary.

Furthermore, the absence of external amenity impacts such as overshadowing or privacy impacts does not, in itself, justify a substantial departure from a control designed to manage use intensity, internal amenity, and site capacity. The minimum lot size standard ensures that boarding houses are located on sites capable of accommodating the land use in a comprehensive, orderly, and sustainable manner. Compliance with this standard is fundamental to ensuring that the development can operate without generating adverse amenity impacts for future occupants.

In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The variation request does not establish that the standard is unreasonable or unnecessary in the circumstances of the case and fails to demonstrate that the objectives of the control are achieved notwithstanding the non-compliance.

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. 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.

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. 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, lot size, acoustic mitigation, landscaped areas and solar access. These deficiencies would adversely affect resident and neighbour amenity through increased noise potential, 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 *State Environmental Planning Policy (Housing) 2021* requires the below with respect to communal living areas –

(g) for a boarding house containing more than 6 boarding rooms—

(i) a total of at least 30m² of communal living area plus at least a further 2m² for each boarding room in excess of 6 boarding rooms, and

(ii) minimum dimensions of 3m for each communal living area,

As such, the proposal is required to provide a minimum of 36m² of area designated as communal living area, excluding any circulation space.

The Applicant asserts that the proposal provides a total of 40 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 21 and 22, once circulation areas are excluded, the combined functional communal living area is approximately 30.21m², which falls short of the minimum requirement under Clause 24(2)(g)(i) of the Housing SEPP.

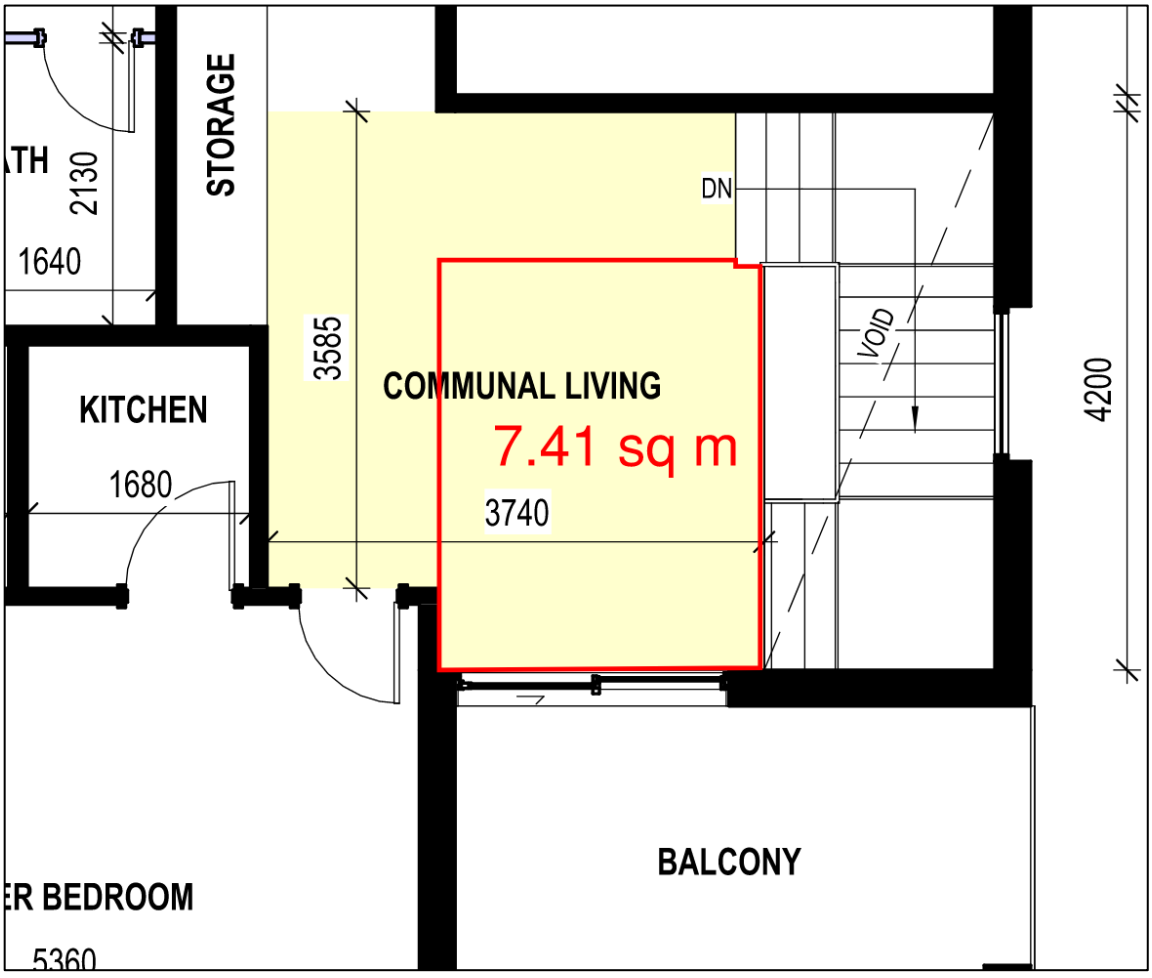


Figure 21: First floor communal living area *(Council's Assessing Officer Measurement)*

D42/26

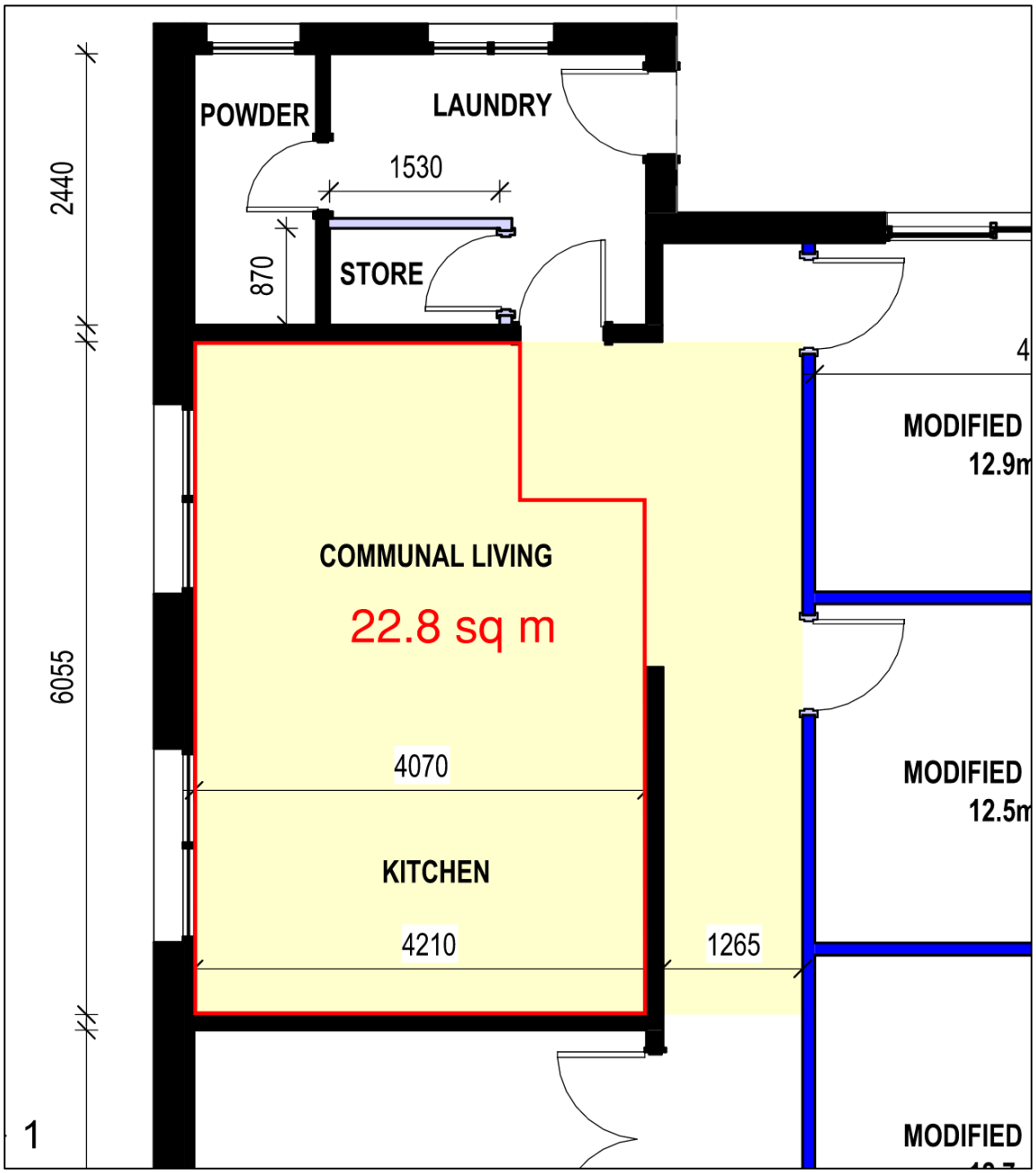


Figure 22: Ground floor communal living area *(Council's Assessing Officer Measurement)*

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 boarding 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.

10. Conclusion

That the application for *conversion of an existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works* be refused for the following reasons:

1. Pursuant to Clause 2.3 of the Randwick Local Environmental Plan 2012 (RLEP 2012), the proposal is inconsistent with the objectives of the R2 Low Density Residential Zone. The development fails to complement the desired future built form of the locality, does not achieve or protect a high level of residential amenity, is inconsistent with Council's strategic

planning framework for residential development in the area, and does not facilitate a high standard of urban design.

2. Pursuant to Clause 24(2)(c) of the State Environmental Planning Policy (Housing) 2021, the proposal does not provide the minimum required landscaping area. Although the Applicant has submitted a written request to vary this development standard under Clause 4.6, the request does not adequately demonstrate that the non-compliance is unreasonable or unnecessary in the circumstances, nor does it establish sufficient environmental planning grounds to justify the variation.

3. Pursuant to Clause 24(2)(e) of the SEPP (Housing) 2021, the proposal fails to provide adequate solar access to communal living areas. While the Applicant has submitted a Clause 4.6 variation request, the justification does not satisfactorily demonstrate that the non-compliance is unreasonable or unnecessary, nor does it provide sufficient environmental planning grounds to support the variation.

4. Pursuant to Clause 24(2)(g)(i) of the SEPP (Housing) 2021, the proposal does not provide the required communal living areas. The Applicant has not submitted a written request to vary this development standard under Clause 4.6. Consequently, the Applicant has not demonstrated that the non-compliance is unreasonable or unnecessary, nor provided adequate environmental planning grounds to justify a variation.

5. Pursuant to Clause 25(1)(g)(i) of the SEPP (Housing) 2021, the suitability of the site has not been adequately demonstrated, as the site does not comply with the relevant minimum lot size development standard. Although the Applicant has submitted a Clause 4.6 variation request, the justification fails to demonstrate that the non-compliance is unreasonable or unnecessary and does not provide sufficient environmental planning grounds to support the variation.
6. Pursuant to the requirement for a complete and robust assessment, insufficient information has been submitted regarding potential acoustic impacts. As a result, the acoustic implications of the development cannot be properly assessed.

7. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to result in adverse environmental impacts, including poor amenity for future occupants and unacceptable acoustic impacts.

8. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the site is not suitable for the proposed development. The extent of the variations sought is unacceptable on merit and would result in adverse impacts.

9. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposed development is not in the public interest. The proposal would set an undesirable precedent by introducing an inappropriate form of high-density residential use and an excessive intensification of land use. The development represents an overdevelopment of the site, results in poor amenity outcomes for future occupants, generates potential acoustic impacts, and fails to comply with applicable development standards and planning controls under both State and Council policies.

D42/26

Appendix 1: Referrals

1. Internal referral comments:

1.1. Building Compliance

"The Applicant must comply with the requirements for BCA Compliance under the provisions of the Building Code of Australia (BCA) Compliance Statement, prepared by Beyond Certification dated 27 January 2026"

Conversion of existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works.

Comments:

The existing 2 storey dwelling was the subject of a compliant in relation to the use of the premises in September 2025.

An inspection revealed that building works had been carried out without prior development consent and a Notice of Intention, dated 28 October 2025, has been served on the owners.

A BCA Compliance Statement, prepared by Beyond Certification, dated 27 January 2026, advising that the proposed development is capable of complying with the requirements of the ABCB Housing Provisions Standard 2022 subject to the following;

a. *Smoke alarms will be installed ;*
    1. *Within all individual bedrooms.*
    2. *In every hallway or corridor associated with a bedroom in accordance with Clause 9.5.5 of the ABCB Housing Provisions Standard 2022.*

b. *Emergency lighting will be provided in accordance with the ABCB Housing Provisions Standard 2022.*

Recommend approval subject to conditions.

1.2. Development Engineer

An application has been received for conversion of existing dwelling house to a boarding house comprising 3 single rooms and 6 double rooms, minor internal and external works, and regularisation of unauthorised works.

<u>This report is based on the following plans and documentation:</u>

- *Architectural Plans by Connatus dated 22/1/2026*
- *Statement of Environmental Effects by Urban Pathways Consulting dated 29/1/2026*
- *Detail & Level Survey by 3 Linx 10/12/2025*

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

Flooding Comments
The site lies within the catchment for the Council commissioned and adopted Kensington/Centennial Park Flood study which indicates the site is located within an overland flow path and will likely be affected by flooding during major storm events.

Flood depths of generally between 0.1 -0.3m are predicted over most of the site for the 1% AEP (1 in 100yr) flood event.

As there is no change in the building footprint or carparking, the existing building and parking spaces would therefore be considered to be existing and generally not subject to flood related development controls as specified in the DCP. In this case however the addition of more bedrooms and residents

on the ground floor could potentially increase the flooding risk to occupants due to the intensification of use, hence a reassessment of the flood risk is required.

The site survey shows the existing ground floor levels are RL 19.88 AHD at the front entrance and RL 19.81 AHD at the rear. Council's Wateride flooding software indicates the flood model predicts flood levels would be RL 19.52 AHD at the front (around 0.1 m deep) and RL 19.17 AHD at the rear (around 0.23 m deep) for the 1% AEP (1 in 100yr) flood.

The existing floor levels are therefore well above predicted flood levels with a 300mm freeboard provided above the 1% AEP at the front and a 640mm freeboard provided at the rear,

Based on this, the floor levels are satisfactory, and Development Engineering is satisfied that the intensification of use of the building will not increase the flooding risk to occupants.

The application is therefore acceptable from a flooding perspective.

Parking Comments
The development proposes to convert an existing dwelling house into a boarding house. The parking facilities are not proposed to be altered. A parking assessment for the conversion has been done using the below requirements.

Under Clause 24 (i) Part 3 of State Environmental Planning Policy (Housing) 2021 being a non-discretionary standard, parking is to be provided for Boarding Housing at the following rates unless a relevant planning instrument specifies a lower number;

(i) For development on land in an accessible area – 0.2 parking spaces for each boarding room, or

(ii) Otherwise – 0.5 parking spaces for each boarding room.

The site lies within an accessible hence (i) applies

Parking Required = 0.2 x 9
= 1.8 spaces
= 2 spaces (rounded)

Parking Proposed = 2 spaces

The parking provision is therefore satisfactory

<u>Motorbike & Bicycle Parking</u>
Clause 69 (h) of the Housing SEPP 2021 being standards for Boarding Housing states;

(h) The boarding house will include adequate bicycle and motorcycle parking spaces

Specific parking rates for bicycle and motorbike parking are not provided in the SEPP (Housing) 2021, hence as a guide the Motorbike and Bicycle Parking rates specified for boarding house in Table 1 & Table 3 in Part B7 of the DCP are deemed to apply being;

- *1 motorcycle space per 5 rooms*
- *1 bike space per 2 rooms + 1 visitor space per 10 rooms*

As the number of boarding rooms is 9 this will require the provision of 5 bicycle and 2 motorbike spaces.

It is proposed to provide 9 bicycle parking and 1 motorcycle parking space. Development Engineering has no objection to the proposed parking provision as the additional bicycle parking makes up for the motorcycle parking shortfall.

Waste Management Comments
The proposal will comprise of co-Living for 6 double rooms and 3 single rooms. Assuming that at least half of the double rooms are fully occupied by two occupant amounts to a total of 12 occupants occupying the 9 rooms.

Council's adopted waste generation rates for Co-living are as follows

- *7L per occupant per day for garbage*
- *3L per occupant per day for recycling*
- *14L per room per week for FOGO*

Assuming Council's standard collection frequencies of once per week for garbage and FOGO and once per fortnight for recycling typical waste Generation for the proposed development is calculated as follows;

Normal waste generated (weekly) = 7 x 12 x 7 = 588L = 3 x 240L bins

Recycled Waste generated (fortnightly) = 3 x 12 x 14 = 504L = 3 x 240L bins

FOGO Waste generated = 14 x 9 = 126L = 1 x 240L bin

The proposed development will need to make provision for a total of 7 x 240L bins with adequate access to all bins. A new Operational Wastre management Plan will also need to be prepared for the site and approved by Council detailing the responsibilities of occupants and caretaker as well as the proposed bin presentation area kerbside.

Suitable conditions have been included in this report.

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

Minimum Lot Size

Clause 4.6 Variation Request – Minimum Lot Size
1 Borrodale Road, Kingsford (Lot 1 DP 12842)

DEVELOPMENT APPLICATION
131/2026
Randwick City Council
5 February 2026
Records Received

UP urban pathways consulting

29 January 2026
Ref: UP2537

CLAUSE 4.6 VARIATION REQUEST – MINIMUM LOT SIZE

PROPOSAL: **TO CONVERT THE EXISTING DWELLING HOUSE TO A BOARDING HOUSE**
SITE: **1 BORRODALE ROAD, KINGSFORD (LOT 1 DP 12842)**

1. INTRODUCTION

This Clause 4.6 Variation Request (**Variation Request**) has been prepared in support of a Development Application (**DA**) for the conversion of a dwelling house into a boarding house at 1 Borrodale Road, Kingsford, being the land legally described as Lot 1 in DP 12842 (**Site**). Accordingly, this DA is made to Randwick City Council (**Council)** pursuant to the provisions of Part 4 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

The Site is zoned R2 Low Density Residential, pursuant to *Randwick Local Environmental Plan 2012* (**RLEP 2012**). The conversion of the dwelling house into a boarding house is permitted with consent in the zone and aligns with the zone objectives.

The Proposal generally complies with the objectives and provisions of *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**), with the exception of the minimum lot size for a boarding house prescribed by Clause 25(1)(g)(i) of the Housing SEPP for which this Variation Request is sought, pursuant to Clause 4.6 of RLEP 2012. The Site has a lot size of 443sqm which is a variation of 157sqm or 26% from the development standard.

The Proposal seeks consent to convert the existing dwelling house to a boarding house, including the following minor internal and external works:

- Internal alterations to the Ground Floor level to provide a total of 4 boarding rooms, a new store, and provide an open plan kitchen and communal living area
- Internal alterations to the First Floor level to provide a total of 5 boarding rooms, convert the bathroom into a laundry and two smaller bathrooms and convert the master bedroom walk-in-robe into a kitchen
- Provide 9 new bicycle parking spaces, 2 new motorcycle parking spaces, and retain the existing double garage for car parking.

The Proposal also seeks to regularise unauthorised minor internal works that have been carried out on the Site.

This Variation Request has been prepared in accordance with the objectives contained within Clause 4.6 of RLEP 2012 and the Minimum Lot Size development standard prescribed under Clause 25(1)(g)(i) of the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the Proposal, despite the variation, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

D42/26

2. DEVELOPMENT STANDARD VARIATION

Under the provisions of Clause 25(1)(g)(i) of the Housing SEPP, the Site is subject to a Minimum Lot Size of 600sqm. The parameters of the Site are outlined in **Table 1** below.

Table 1. Development standard proposed to be varied	
Housing SEPP Clause	**Parameter**
Clause 25(1)(g)(i) – Minimum Lot Size	600sqm
Existing Site area	443sqm
Proposed Variation	157sqm or 26%

The Proposal seeks a 157sqm or 26% variation to the development standard. The circumstances of the Site and the Proposal warrant an appropriate degree of flexibility in the application of the development standard to achieve the best outcome for the Site.

3. PROVISIONS OF CLAUSE 4.6

Clause 4.6 of RLEP 2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

> *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)*

Accordingly, a consent authority must be satisfied:

a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in this Variation Request.

D42/26

4. OBJECTIVES OF THE STANDARD

Clause 25 of the Housing SEPP does not provide objectives for the development standards prescribed therein.

Notwithstanding, Clause 3 of the Housing SEPP provides principles for the policy generally, which are reproduced below:

> *The principles of this Policy are as follows—*
> *(a) enabling the development of diverse housing types, including purpose-built rental housing,*
> *(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
> *(c) ensuring new housing development provides residents with a reasonable level of amenity,*
> *(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
> *(e) minimising adverse climate and environmental impacts of new housing development,*
> *(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
> *(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
> *(h) mitigating the loss of existing affordable rental housing.*

The objectives of Clause 25 are unclear, but the merits of the proposed variation against the principles of the Housing SEPP have been discussed in **Table 2** below:

Table 2. Objectives of the Housing SEPP

Objective	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing	The Proposal provides boarding house development in an area traditionally containing detached dwellings and residential flat buildings to provide diversity in accommodation types. The Proposal is consistent with this objective, notwithstanding the variation.
(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 Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
(c) ensuring new housing development provides residents with a reasonable level of amenity	The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants. The Proposal is consistent with this objective, notwithstanding the variation.

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5. OBJECTIVES OF THE ZONE

Clause 2.3 of RLEP 2012 sets out specific objectives of the R2 Low Density Residential zone. Therefore, consideration has been given to the objectives of Clause 2.3 in **Table 3** below:

Table 3. Objectives of the Zone

Objective	Comment
• *To provide for the housing needs of the community within a low density residential environment.*	The Proposal provides for the housing needs of the community within a low density residential environment by providing boarding house development which retains the existing built form and is low density in nature. The Proposal is consistent with this objective, notwithstanding the variation.
• *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*	Not applicable. The Proposal is not inconsistent with this objective.
• *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area*	The proposal provides residential development that maintains the character of built and natural features in the surrounding area. The Proposal provides compliant setbacks, site coverage, building height, and is therefore consistent with the built form character of residential development in the area. The Proposal presents a two storey form to the street which is consistent with Council's desired future character as expressed by the local controls. The Proposal is consistent with this objective, notwithstanding the variation.
• *To protect the amenity of residents*	The Proposal retains the existing built form on the Site and therefore will not present any amenity impacts on adjoining residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *To encourage housing affordability*	The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *To enable small-scale business uses in existing commercial buildings*	Not applicable. The Proposal is not inconsistent with this objective.

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6. ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The NSW Land and Environment Court in Four2Five Pty LTD v Ashfield Council [2015] NSWLEC 90, considered how numerical compliance with a development standard might be considered unreasonable or unnecessary and referred to the earlier Court decision in Wehbe v Pittwater Council [2007] NSWLEC 827. The court provided five tests in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

- ***Test 1:*** *Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the standard are achieved notwithstanding the non-compliance with the standard*
- ***Test 2:*** *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
- ***Test 3:*** *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
- ***Test 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; and/or*
- ***Test 5:*** *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

This Variation Request has adopted the first test in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the Minimum Lot Size development standard are satisfied notwithstanding the variation, as follows:

- When considering whether the Site is adequately sized, matters such as internal amenity, environmental impacts, consistency with the character of the area, and provision of services are all relevant considerations. The Proposal is considered to be adequately sized as the development is capable of complying with all relevant development standards of the Housing SEPP and provides a high level of internal amenity of future residents

- The existing allotment is undersized as result of historic subdivisions before the Housing SEPP came into force. Various other forms of residential development could be proposed on the Site and would be subject to similar development controls

- The subdivision pattern of the locality is varied with a variety of allotment shapes and sizes existing currently and the existing allotment is consistent with the character of the area

- The development retains the existing building and adaptively re-uses the existing built form to allow for an increase in housing.

- The Proposal provides for the housing needs of the community within a low density residential environment by providing boarding house development which retains the existing built form and is low density in nature.

- The proposal provides for an intensity of development that is capable of being serviced by the existing infrastructure.

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- The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it provides for a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in retaining the existing dwelling house but whilst providing additional housing is consistent with the character of the area.

- The Proposal can accommodate a boarding house that does not result in adverse amenity impacts on adjoining development, despite the small lot size.

In view of the circumstances of the Proposal, strict compliance with Clause 25(1)(g)(i) of the Housing SEPP is considered to be both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 25(1)(g)(i) of the Housing SEPP as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

The existing lot size will retain compatibility with surrounding development and continue to support the residential nature of the Site whilst increasing housing supply in the area, consistent with the objectives of the R2 Low Density Residential zone.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Variation Request is considered well founded because, notwithstanding the proposed variation to the Minimum Lot Size, there are sufficient environmental planning grounds to justify the contravention of the development standard, as follows:

- The proposed lot size is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 4**.

- The proposed lot size is consistent with the objectives of the R2 Low Density Residential zone as described in **Section 5**.

- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 6**.

- The Proposal is entirely compliant with the provisions of the Randwick Development Control Plan 2013 (**RDCP 2013**) in the following manner:

    - The Proposal provides compliant front, side, and rear boundary setbacks;

    - The Proposal complies with the maximum building height and FSR controls and therefore presents a built form and scale that is consistent with the intention of the controls and is not considered to result in amenity impacts of excessive bulk and scale to any adjoining properties.

    - There are no unreasonable acoustic or visual privacy impacts as a result of the Proposal, and the Proposal complies with Council's overshadowing and visual bulk controls.

- The Proposal would remain compatible with residential land uses in light of the above.

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For the reasons outlined above, it is considered that the variation to the Minimum Lot Size development standard under Clause 25(1)(g)(i) of the Housing SEPP is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under RLEP 2012.

8. OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Table 4. Objectives of the EP&A Act

Objective	Comment
• *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*	The Proposal will have positive social and economic impacts on the area and wider Randwick City LGA given the employment generated by demolition and construction activities on the Site. No negative social or economic impacts are expected. The assessment carried out as part of the Statement of Environmental Effects has not identified any negative environmental outcomes as a result of the Proposal.
• *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*	A BASIX Certificate was submitted with the DA which sets benchmark sustainability standards to achieve ecologically sustainable development (ESD). By maximizing natural light and reducing reliance on artificial lighting, the Proposal promotes energy efficiency and minimises environmental impact.
• *to promote the orderly and economic use and development of land,*	The proposed variation supports the efficient use of the Site for residential purposes while ensuring compliance with planning principles. The Proposal optimises land use and contributes to the orderly and economic use and development of land in the area.
• *to promote the delivery and maintenance of affordable housing,*	The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*	The Proposal will not have any adverse impact on the environment including threatened and other species of native animals and plants, ecological communities and their habitats.
• *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*	The Proposal does not impact on the heritage significance of any nearby heritage items or Heritage Conservation Areas thereby aligning with sustainable management practices for built and cultural heritage.

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Table 4. Objectives of the EP&A Act	
Objective	**Comment**
• *to promote good design and amenity of the built environment,*	The Proposal promotes a high level of architectural design and amenity outcomes for the Site.
• *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*	The Proposal adheres to current building standards and regulations, ensuring the safety and well-being of residents.
• *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*	The Proposal is considered to be local development for which the consent authority will be Randwick City Council.
• *to provide increased opportunity for community participation in environmental planning and assessment.*	The DA is subject to the relevant public notification requirements.

9. MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed variation will not give rise to any matters of significance for state or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this proposed variation exceeds 10% and would be required to be determined by the Local Planning Panel.

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10. SUMMARY AND CONCLUSION

For the reasons outlined above, it is considered that the variation to Clause 25(1)(g)(i) of the Housing SEPP is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is well-founded for the following reasons as outlined in Clause 4.6 of RLEP 2012 and relevant case law:

- The Proposal is consistent with the objectives of the particular standard and the objectives of the standard are achieved notwithstanding the non-compliance with the standard (refer to **Section 4**).
- The Proposal is consistent with the objectives for development within the zone to provide appropriate housing with a high quality of amenity (refer to **Section 5**).
- Strict compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 6**).
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 7**).
- The Proposal is consistent with the objectives of the Environmental Planning and Assessment Act 1979 (refer to **Section 8**).
- The Proposal does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 9**).

Overall, it is considered that the proposed variation to the Minimum Lot Size development standard control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of RLEP 2012.

D42/26

Appendix 3: Applicant's written request seeking to justify the contravention of the development standard

Solar Access

Clause 4.6 Variation Request – Solar Access
1 Borrodale Road, Kingsford (Lot 1 DP 12842)

DEVELOPMENT APPLICATION
131/2026
Randwick City Council
5 February 2026
Records Received

UP urban pathways consulting

29 January 2026
Ref: UP2537

CLAUSE 4.6 VARIATION REQUEST – SOLAR ACCESS

PROPOSAL: **TO CONVERT THE EXISTING DWELLING HOUSE TO A BOARDING HOUSE**
SITE: **1 BORRODALE ROAD, KINGSFORD (LOT 1 DP 12842)**

1. INTRODUCTION

This Clause 4.6 Variation Request (**Variation Request**) has been prepared in support of a Development Application (**DA**) for the conversion of a dwelling house into a boarding house (**Proposal**) at 1 Borrodale Road, Kingsford, being the land legally described as Lot 1 in DP 12842 (**Site**). Accordingly, this DA is made to Randwick City Council (**Council)** pursuant to the provisions of Part 4 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

The Site is zoned R2 Low Density Residential, pursuant to *Randwick Local Environmental Plan 2012* (**RLEP 2012**). The conversion of the dwelling house into a boarding house is permitted with consent in the zone and aligns with the zone objectives.

The Proposal generally complies with the objectives and provisions of *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**), with the exception of the solar access to communal living area non-discretionary development standard prescribed by Clause 24(2)(e) of the Housing SEPP for which this Variation Request is sought, pursuant to Clause 4.6 of RLEP 2012.

Clause 24(2)(e) of the Housing SEPP requires that 1 communal living area in the boarding house receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter. The communal living area on the First Floor level receives 1 hour of direct solar access between 9am and 3pm at mid-winter, which is a variation of 2 hours or 66%.

The Proposal seeks consent to convert the existing dwelling house to a boarding house, including the following minor internal and external works:

- Internal alterations to the Ground Floor level to provide a total of 4 boarding rooms, a new store, and provide an open plan kitchen and communal living area
- Internal alterations to the First Floor level to provide a total of 5 boarding rooms, convert the bathroom into a laundry and two smaller bathrooms and convert the master bedroom walk-in-robe into a kitchen
- Provide 9 new bicycle parking spaces, 2 new motorcycle parking spaces, and retain the existing double garage for car parking.

The Proposal also seeks to regularise unauthorised minor internal works that have been carried out on the Site.

D42/26

This Variation Request has been prepared in accordance with the objectives contained within Clause 4.6 of RLEP 2012 and the solar access non-discretionary development standard prescribed under Clause 24(2)(e) the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the Proposal, despite the variation, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

2. DEVELOPMENT STANDARD VARIATION

The parameters for the variation to Clause 24(2)(e) of the Housing SEPP are outlined in **Table 1** below.

Table 1. Non-discretionary development standard proposed to be varied	
Housing SEPP Clause	**Parameter**
Clause 24(2)(e) – Solar access	3 hours direct solar access
Solar access provided	1 hour
Proposed Variation	2 hours or 66%

The Proposal seeks a 2 hour or 66% variation to the development standard. The circumstances of the Site and the Proposal warrant an appropriate degree of flexibility in the application of the development standard to achieve the best outcome for the Site.

3. PROVISIONS OF CLAUSE 4.6

Clause 4.6 of RLEP 2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

> *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)*

Accordingly, a consent authority must be satisfied:

a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in this Variation Request.

D42/26

4. OBJECTIVES OF THE STANDARD

The objective of Clause 24 is to identify development standards for particular matters relating to development for the purposes of boarding houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

An assessment of the merits of the proposed variation against the principles of the Housing SEPP have been discussed in **Table 2** below:

Table 2. Objectives of the Housing SEPP

Objective	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing	The Proposal provides boarding house development in an area traditionally containing detached dwellings and residential flat buildings to provide diversity in accommodation types. The Proposal is consistent with this objective, notwithstanding the variation.
(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 Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
(c) ensuring new housing development provides residents with a reasonable level of amenity	The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants. The Proposal provides two (2) internal communal living areas, split across the two levels of the boarding house. The First Floor level communal living area is north facing and has an attached balcony and east-facing window, providing a high level of amenity. The Ground Floor level communal living area directly adjoins the communal kitchen and has windows facing west. Given the orientation of the existing building and the desire to retain the building with minimal interventions, achieving 3 hours of continuous direct solar access to either one of the communal living areas is unachievable. The Proposal achieves a high level of amenity for future residents as evident by the sufficiently sized boarding rooms, oversized communal outdoor area, multiple communal living areas, and two (2) balconies with different orientations. Despite achieving sufficient internal communal living areas, the Proposal also provides balconies that receive adequate solar access that comply with the requirements of Clause 24(2)(e),

Table 2. Objectives of the Housing SEPP	
Objective	**Comment**
	further improving the amenity of the boarding house for residents. Both communal living areas receive high levels or natural daylight and ventilation, despite not achieving 3 hours of continuous direct solar access. The Proposal is consistent with this objective, notwithstanding the variation.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services	The Proposal is located within an accessible area as defined by the Housing SEPP. The Proposal utilises the accessible location of the Site to provide additional accommodation in an area well services by public transport, shops, educational establishments, and employment opportunities. The Proposal is consistent with this objective, notwithstanding the variation.
(e) minimising adverse climate and environmental impacts of new housing development	The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the impact of the change of use on the climate and environment is minimal. The Proposal is consistent with this objective, notwithstanding the variation.
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality	The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the design of the building remains consistent with the prevailing character of the area. The Proposal is consistent with this objective, notwithstanding the variation.
(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 Proposal will have a positive impact on the social, economic and environmental attributes of the Randwick City LGA. The Proposal is consistent with this objective, notwithstanding the variation.
(h) mitigating the loss of existing affordable rental housing	The Proposal encourages affordable housing and therefore is consistent with this objective, notwithstanding the variation.

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5. OBJECTIVES OF THE ZONE

Clause 2.3 of RLEP 2012 sets out specific objectives of the R2 Low Density Residential zone. Therefore, consideration has been given to the objectives of Clause 2.3 in **Table 3** below:

Table 3. Objectives of the Zone

Objective	Comment
• *To provide for the housing needs of the community within a low density residential environment.*	The Proposal provides for the housing needs of the community within a low density residential environment by providing boarding house development which retains the existing built form and is low density in nature. The Proposal is consistent with this objective, notwithstanding the variation.
• *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*	Not applicable. The Proposal is not inconsistent with this objective.
• *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area*	The proposal provides residential development that maintains the character of built and natural features in the surrounding area. The Proposal provides compliant setbacks, landscaped area, site coverage, building height, and is therefore consistent with the built form character of residential development in the area. The Proposal presents a two storey form to the street which is consistent with Council's desired future character as expressed by the local controls. The Proposal is consistent with this objective, notwithstanding the variation.
• *To protect the amenity of residents*	The Proposal retains the existing built form on the Site and therefore will not present any amenity impacts on adjoining residents. The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants. The Proposal achieves a high level of amenity for future residents as evident by the sufficiently sized boarding rooms, oversized communal outdoor area, multiple communal living areas, and two (2) balconies with different orientations. Despite achieving sufficient internal communal living areas, the Proposal also provides balconies that receive adequate solar access that comply with the requirements of Clause 24(2)(e), further improving the amenity of the boarding house for residents.

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Table 3. Objectives of the Zone	
Objective	**Comment**
	Both communal living areas receive high levels or natural daylight and ventilation, despite not achieving 3 hours of continuous direct solar access. The Proposal is consistent with this objective, notwithstanding the variation.
• *To encourage housing affordability*	The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *To enable small-scale business uses in existing commercial buildings*	Not applicable. The Proposal is not inconsistent with this objective.

6. ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The NSW Land and Environment Court in Four2Five Pty LTD v Ashfield Council [2015] NSWLEC 90, considered how numerical compliance with a development standard might be considered unreasonable or unnecessary and referred to the earlier Court decision in Wehbe v Pittwater Council [2007] NSWLEC 827. The court provided five tests in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

- ***Test 1:*** *Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the standard are achieved notwithstanding the non-compliance with the standard*
- ***Test 2:*** *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
- ***Test 3:*** *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
- ***Test 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; and/or*
- ***Test 5:*** *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

This Variation Request has adopted the first test in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the solar access development standard are satisfied notwithstanding the variation, as follows:

- The Proposal seeks to substantially retain the existing built form, with minor intervention required to convert the dwelling house to a boarding house. The existing building is consistent with the desired future character for the Site. The retention of the existing built form results in two (2) internal communal living areas, split across the two levels of the boarding house. The First Floor

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level communal living area is north facing and has an attached balcony and east-facing window, providing a high level of amenity. The Ground Floor level communal living area directly adjoins the communal kitchen and has windows facing west. Given the orientation of the existing building and the desire to retain the building with minimal interventions, achieving 3 hours of continuous direct solar access to either one of the communal living areas is unachievable.

- The Proposal achieves a high level of amenity for future residents as evident by the sufficiently sized boarding rooms, oversized communal outdoor area, multiple communal living areas, and two (2) balconies with different orientations.

- Despite achieving sufficient internal communal living areas, the Proposal also provides balconies that receive adequate solar access that comply with the requirements of Clause 24(2)(e), further improving the amenity of the boarding house for residents.

- Both communal living areas receive high levels or natural daylight and ventilation, despite not achieving 3 hours of continuous direct solar access.

- The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it provides for a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in retaining the existing dwelling house but whilst providing additional housing is consistent with the character of the area.

- The Proposal can accommodate a boarding house that does not result in adverse amenity impacts on adjoining development, despite not achieving the solar access requirements.

In view of the circumstances of the Proposal, strict compliance with Clause 24(2)(e) of the Housing SEPP is both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 24(2)(e) of the Housing SEPP as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

The existing building will retain compatibility with surrounding development and continue to support the residential nature of the Site whilst increasing housing supply in the area, consistent with the objectives of the R2 Low Density Residential zone.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Variation Request is considered well founded because, notwithstanding the proposed variation to the minimum solar access, there are sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard, as follows:

- The proposed lot size is consistent with the underlying objective or purpose of the standard as demonstrated in **Section** Error! Reference source not found..

- The proposed lot size is consistent with the objectives of the R2 Low Density Residential zone as described in **Section 0**.

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- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 0**.
- The Proposal is entirely compliant with the provisions of the Randwick Development Control Plan 2013 (**RDCP 2013**) in the following manner:
  - The Proposal provides compliant front, side, and rear boundary setbacks;
  - The Proposal complies with the maximum building height and FSR controls and therefore presents a built form and scale that is consistent with the intention of the controls and will not result in amenity impacts of excessive bulk and scale to any adjoining properties.
  - There are no unreasonable acoustic or visual privacy impacts as a result of the Proposal, and the Proposal complies with Council's overshadowing and visual bulk controls.
- The Proposal would remain compatible with residential land uses in light of the above.

For the reasons outlined above, it is considered that the variation to the solar access non-discretionary development standard under Clause 24(2)(e) of the Housing SEPP is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under RLEP 2012.

8. OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Table 4. Objectives of the EP&A Act

Objective	Comment
• *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*	The Proposal will have positive social and economic impacts on the area and wider Randwick City LGA given the employment generated by demolition and construction activities on the Site. No negative social or economic impacts are expected. The assessment carried out as part of the Statement of Environmental Effects has not identified any negative environmental outcomes as a result of the Proposal.
• *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*	A BASIX Certificate was submitted with the DA which sets benchmark sustainability standards to achieve ecologically sustainable development (ESD). By maximizing natural light and reducing reliance on artificial lighting, the Proposal promotes energy efficiency and minimises environmental impact.
• *to promote the orderly and economic use and development of land,*	The proposed variation supports the efficient use of the Site for residential purposes while ensuring compliance with planning principles. The Proposal optimises land use and contributes to the orderly and economic use and development of land in the area.

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Table 4. Objectives of the EP&A Act	
Objective	**Comment**
• *to promote the delivery and maintenance of affordable housing,*	The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*	The Proposal will not have any adverse impact on the environment including threatened and other species of native animals and plants, ecological communities and their habitats.
• *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*	The Proposal does not impact on the heritage significance of any nearby heritage items or Heritage Conservation Areas thereby aligning with sustainable management practices for built and cultural heritage.
• *to promote good design and amenity of the built environment,*	The Proposal promotes a high level of architectural design and amenity outcomes for the Site.
• *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*	The Proposal adheres to current building standards and regulations, ensuring the safety and well-being of residents.
• *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*	The Proposal is local development for which the consent authority will be Randwick City Council.
• *to provide increased opportunity for community participation in environmental planning and assessment.*	The DA is subject to the relevant public notification requirements.

9. MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed variation will not give rise to any matters of significance for state or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this proposed variation exceeds 10% and would be required to be determined by the Local Planning Panel.

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10. SUMMARY AND CONCLUSION

For the reasons outlined above, it is considered that the variation to Clause 24(2)(e) of the Housing SEPP is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is well-founded for the following reasons as outlined in Clause 4.6 of RLEP 2012 and relevant case law:

- The Proposal is consistent with the objectives of the particular standard and the objectives of the standard are achieved notwithstanding the non-compliance with the standard (refer to **Section 4**).
- The Proposal is consistent with the objectives for development within the zone to provide appropriate housing with a high quality of amenity (refer to **Section 5**).
- Strict compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 6**).
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 7**).
- The Proposal is consistent with the objectives of the Environmental Planning and Assessment Act 1979 (refer to **Section 8**).
- The Proposal does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 9**).

Overall, it is considered that the proposed variation to the solar access non-discretionary development standard control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of RLEP 2012.

11.

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Appendix 4: Applicant's written request seeking to justify the contravention of the development standard

Landscaped Area

Clause 4.6 Variation Request – Landscaped Area
1 Borrodale Road, Kingsford (Lot 1 DP 12842)

DEVELOPMENT APPLICATION
131/2026
Randwick City Council
5 February 2026
Records Received

29 January 2026
Ref: UP2537

CLAUSE 4.6 VARIATION REQUEST – LANDSCAPED AREA

PROPOSAL: **TO CONVERT THE EXISTING DWELLING HOUSE TO A BOARDING HOUSE**
SITE: **1 BORRODALE ROAD, KINGSFORD (LOT 1 DP 12842)**

1. INTRODUCTION

This Clause 4.6 Variation Request (**Variation Request**) has been prepared in support of a Development Application (**DA**) for the conversion of a dwelling house into a boarding house (**Proposal**) at 1 Borrodale Road, Kingsford, being the land legally described as Lot 1 in DP 12842 (**Site**). Accordingly, this DA is made to Randwick City Council (**Council)** pursuant to the provisions of Part 4 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

The Site is zoned R2 Low Density Residential, pursuant to *Randwick Local Environmental Plan 2012* (**RLEP 2012**). The conversion of the dwelling house into a boarding house is permitted with consent in the zone and aligns with the zone objectives.

The Proposal generally complies with the objectives and provisions of *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**), with the exception of the landscaped area non-discretionary development standard prescribed by Clause 24(2)(c) of the Housing SEPP for which this Variation Request is sought, pursuant to Clause 4.6 of RLEP 2012.

Clause 24(2)(c) of the Housing SEPP requires 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 must be provided. Control 2.2.1 of Chapter C2 of Randwick Development Control Plan 2013 (**RDCP 2013**) prescribes a minimum of 50% of the Site area is to be landscaped area for multi dwelling housing in the R2 zone. Therefore, 216sqm of landscaped area is required. The Site has 178sqm of existing landscaped area equating to 41% of the Site area, which is a variation of 38sqm or 17.5%.

The Proposal seeks consent to convert the existing dwelling house to a boarding house, including the following minor internal and external works:

- Internal alterations to the Ground Floor level to provide a total of 4 boarding rooms, a new store, and provide an open plan kitchen and communal living area
- Internal alterations to the First Floor level to provide a total of 5 boarding rooms, convert the bathroom into a laundry and two smaller bathrooms and convert the master bedroom walk-in-robe into a kitchen
- Provide 9 new bicycle parking spaces, 2 new motorcycle parking spaces, and retain the existing double garage for car parking.

The Proposal also seeks to regularise unauthorised minor internal works that have been carried out on the Site.

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This Variation Request has been prepared in accordance with the objectives contained within Clause 4.6 of RLEP 2012 and the landscaped area non-discretionary development standard prescribed under Clause 24(2)(c) the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the Proposal, despite the variation, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

2. DEVELOPMENT STANDARD VARIATION

The parameters for the variation to Clause 24(2)(c) of the Housing SEPP are outlined in **Table 1** below.

Table 1. Non-discretionary development standard proposed to be varied

Housing SEPP Clause	Parameter
Clause 24(2)(c) – Landscaped area	50% of the Site area (216.5sqm)
Existing Site area	443sqm
Landscaped area	41.1% of the Site area (178sqm)
Proposed Variation	38sqm or 17.5%

The Proposal seeks a 38sqm or 17.5% variation to the development standard. The circumstances of the Site and the Proposal warrant an appropriate degree of flexibility in the application of the non-discretionary development standard to achieve the best outcome for the Site.

3. PROVISIONS OF CLAUSE 4.6

Clause 4.6 of RLEP 2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

> *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)*

Accordingly, a consent authority must be satisfied:

a) that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
b) of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in this Variation Request.

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4. OBJECTIVES OF THE STANDARD

The objective of Clause 24 is to identify development standards for particular matters relating to development for the purposes of boarding houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

An assessment of the merits of the proposed variation against the principles of the Housing SEPP have been discussed in **Table 2** below:

Table 2. Objectives of the Housing SEPP

Objective	Comment
(a) enabling the development of diverse housing types, including purpose-built rental housing	The Proposal provides boarding house development in an area traditionally containing detached dwellings and residential flat buildings to provide diversity in accommodation types. The Proposal is consistent with this objective, notwithstanding the variation.
(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 Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
(c) ensuring new housing development provides residents with a reasonable level of amenity	The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants. The Proposal provides 178sqm or 41.1% of the Site as landscaped area which provides significant amenity to future occupants. 103sqm of the landscaped area is provided as communal open space. The Proposal is consistent with this objective, notwithstanding the variation.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services	The Proposal is located within an accessible area as defined by the Housing SEPP. The Proposal utilises the accessible location of the Site to provide additional accommodation in an area well services by public transport, shops, educational establishments, and employment opportunities. The Proposal is consistent with this objective, notwithstanding the variation.
(e) minimising adverse climate and environmental impacts of new housing development	The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the

Table 2. Objectives of the Housing SEPP	
Objective	**Comment**
	impact of the change of use on the climate and environment is minimal. The Proposal is consistent with this objective, notwithstanding the variation.
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality	The Proposal retains the existing built form on the Site and adaptively reuses the existing building for additional housing with minimal demolition and intervention. Therefore, the design of the building remains consistent with the prevailing character of the area. The Proposal is consistent with this objective, notwithstanding the variation.
(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 Proposal will have a positive impact on the social, economic and environmental attributes of the Randwick City LGA. The Proposal is consistent with this objective, notwithstanding the variation.
(h) mitigating the loss of existing affordable rental housing	The Proposal encourages affordable housing and therefore is consistent with this objective, notwithstanding the variation.

5. OBJECTIVES OF THE ZONE

Clause 2.3 of RLEP 2012 sets out specific objectives of the R2 Low Density Residential zone. Therefore, consideration has been given to the objectives of Clause 2.3 in **Table 3** below:

Table 3. Objectives of the Zone	
Objective	**Comment**
• *To provide for the housing needs of the community within a low density residential environment.*	The Proposal provides for the housing needs of the community within a low density residential environment by providing boarding house development which retains the existing built form and is low density in nature. The Proposal is consistent with this objective, notwithstanding the variation.
• *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*	Not applicable. The Proposal is not inconsistent with this objective.
• *To recognise the desirable elements of the*	The proposal provides residential development that maintains the character of built and natural features in the surrounding area.

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Table 3. Objectives of the Zone	
Objective	**Comment**
existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area	The Proposal provides compliant setbacks, landscaped area, site coverage, building height, and is therefore consistent with the built form character of residential development in the area. The Proposal presents a two storey form to the street which is consistent with Council's desired future character as expressed by the local controls. The Proposal is consistent with this objective, notwithstanding the variation.
• *To protect the amenity of residents*	The Proposal retains the existing built form on the Site and therefore will not present any amenity impacts on adjoining residents. The Proposal replaces the use of the existing dwelling house with a boarding house and is consistent with all amenity controls prescribed by the Housing SEPP, RLEP 2012 and RDCP 2013. A high level of amenity is provided for future occupants. The Proposal provides 178sqm or 41.1% of the Site as landscaped area which provides significant amenity to future occupants. 103sqm of the landscaped area is provided as communal open space. The Proposal is consistent with this objective, notwithstanding the variation.
• *To encourage housing affordability*	The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *To enable small-scale business uses in existing commercial buildings*	Not applicable. The Proposal is not inconsistent with this objective.

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6. ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The NSW Land and Environment Court in Four2Five Pty LTD v Ashfield Council [2015] NSWLEC 90, considered how numerical compliance with a development standard might be considered unreasonable or unnecessary and referred to the earlier Court decision in Wehbe v Pittwater Council [2007] NSWLEC 827. The court provided five tests in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

- ***Test 1:*** *Establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the standard are achieved notwithstanding the non-compliance with the standard*
- ***Test 2:*** *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
- ***Test 3:*** *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
- ***Test 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; and/or*
- ***Test 5:*** *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

This Variation Request has adopted the first test in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the landscaped area development standard are satisfied notwithstanding the variation, as follows:

- The Proposal seeks to substantially retain the existing built form, with minor intervention required to convert the dwelling house to a boarding house. The existing building is consistent with the desired future character for the Site, however the change of use to a boarding house requires more onerous landscaped area requirements that the existing use. Notwithstanding, the Proposal provides 178sqm or 41.1% of the Site as landscaped area which provides significant amenity to future occupants. 103sqm of the landscaped area is provided as communal open space. Compliance with the non-discretionary development standard would require demolition of part of the existing building to achieve the standard which would not achieve a better planning outcome.

- The Proposal is consistent with the existing and desired future character of the Site and locality and the surrounding area in that it provides for a scale of development that when viewed from the streetscape and surrounding properties is not dominant in terms of bulk, scale, extent of hardstand or interface with the streetscape. It is argued that the Proposal provides a development outcome that, in retaining the existing dwelling house but whilst providing additional housing is consistent with the character of the area.

- The Proposal can accommodate a boarding house that does not result in adverse amenity impacts on adjoining development, despite the landscaped area provided.

In view of the circumstances of the Proposal, strict compliance with Clause 24(2)(c) of the Housing SEPP is considered to be both unnecessary and unreasonable. The Proposal does not conflict with the intent of Clause 24(2)(c) of the Housing SEPP as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical variation.

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The existing building will retain compatibility with surrounding development and continue to support the residential nature of the Site whilst increasing housing supply in the area, consistent with the objectives of the R2 Low Density Residential zone.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The Variation Request is considered well founded because, notwithstanding the proposed variation to the minimum landscaped area, there are sufficient environmental planning grounds to justify the contravention of the non-discretionary development standard, as follows:

- The proposed lot size is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 0**.
- The proposed lot size is consistent with the objectives of the R2 Low Density Residential zone as described in **Section 5**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 0**.
- The Proposal is entirely compliant with the provisions of the Randwick Development Control Plan 2013 (**RDCP 2013**) in the following manner:
    - The Proposal provides compliant front, side, and rear boundary setbacks;
    - The Proposal complies with the maximum building height and FSR controls and therefore presents a built form and scale that is consistent with the intention of the controls and will not result in amenity impacts of excessive bulk and scale to any adjoining properties.
    - There are no unreasonable acoustic or visual privacy impacts as a result of the Proposal, and the Proposal complies with Council's overshadowing and visual bulk controls.
- The Proposal would remain compatible with residential land uses in light of the above.

For the reasons outlined above, it is considered that the variation to the landscaped area non-discretionary development standard under Clause 24(2)(c) of the Housing SEPP is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under RLEP 2012.

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8. OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Table 4. Objectives of the EP&A Act

Objective	Comment
• *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*	The Proposal will have positive social and economic impacts on the area and wider Randwick City LGA given the employment generated by demolition and construction activities on the Site. No negative social or economic impacts are expected. The assessment carried out as part of the Statement of Environmental Effects has not identified any negative environmental outcomes as a result of the Proposal.
• *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*	A BASIX Certificate was submitted with the DA which sets benchmark sustainability standards to achieve ecologically sustainable development (ESD). By maximizing natural light and reducing reliance on artificial lighting, the Proposal promotes energy efficiency and minimises environmental impact.
• *to promote the orderly and economic use and development of land,*	The proposed variation supports the efficient use of the Site for residential purposes while ensuring compliance with planning principles. The Proposal optimises land use and contributes to the orderly and economic use and development of land in the area.
• *to promote the delivery and maintenance of affordable housing,*	The Proposal encourages affordable housing by replacing an existing single dwelling house with a boarding house containing 9 boarding rooms and accommodating up to 15 residents. The Proposal is consistent with this objective, notwithstanding the variation.
• *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*	The Proposal will not have any adverse impact on the environment including threatened and other species of native animals and plants, ecological communities and their habitats.
• *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*	The Proposal does not impact on the heritage significance of any nearby heritage items or Heritage Conservation Areas thereby aligning with sustainable management practices for built and cultural heritage.
• *to promote good design and amenity of the built environment,*	The Proposal promotes a high level of architectural design and amenity outcomes for the Site.

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Table 4. Objectives of the EP&A Act	
Objective	**Comment**
• *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*	The Proposal adheres to current building standards and regulations, ensuring the safety and well-being of residents.
• *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*	The Proposal is considered to be local development for which the consent authority will be Randwick City Council.
• *to provide increased opportunity for community participation in environmental planning and assessment.*	The DA is subject to the relevant public notification requirements.

9. MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed variation will not give rise to any matters of significance for state or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation. It is noted that this proposed variation exceeds 10% and would be required to be determined by the Local Planning Panel.

10. SUMMARY AND CONCLUSION

For the reasons outlined above, it is considered that the variation to Clause 24(2)(c) of the Housing SEPP is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is well-founded for the following reasons as outlined in Clause 4.6 of RLEP 2012 and relevant case law:

- The Proposal is consistent with the objectives of the particular standard and the objectives of the standard are achieved notwithstanding the non-compliance with the standard (refer to **Section 4**).
- The Proposal is consistent with the objectives for development within the zone to provide appropriate housing with a high quality of amenity (refer to **Section 5**).
- Strict compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 6**).
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 7**).
- The Proposal is consistent with the objectives of the Environmental Planning and Assessment Act 1979 (refer to **Section 8**).
- The Proposal does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 9**).

Overall, it is considered that the proposed variation to the landscaped area non-discretionary development standard control is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of RLEP 2012.

Responsible officer: Braeden Lewis, Environmental Planning Officer

File Reference: DA/131/2026

Responsible officer: Braeden Lewis, Environmental Planning Officer

File Reference: DA/131/2026

D42/26

Development Application Report No. D43/26

Subject: 59 Hastings Avenue, Chifley (DA/8/2026)

Executive Summary

Proposal:	Regularisation of a series of unauthorised works to an existing attached dual occupancy including modifications to window sizes and locations, internal layout and design changes, extension of the building along basement, sides and rear and an increase in height and floor space (Variations to Maximum Building Height and Floor Space Ratio).
Ward:	South Ward
Applicant:	Mr G Smith
Owner:	Mr G Smith
Cost of works:	$0.00
Reason for referral:	The development contravenes the development standard for floor space ratio by more than 10%.

Recommendation

A. That the RLPP is satisfied that the applicant's written requests to vary the development standard relating to Floor Space Ratio and Building Height in Clauses 4.4 and 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 deferred commencement consent under Section 4.16(3) of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/8/2026 for regularisation of unauthorised works to an existing attached dual occupancy, including internal reconfiguration, alterations to windows, basement exaction, rear extensions, balcony and roof modification, and associated works at 59 and 59A Hastings Avenue, Chifley, subject to the deferred commencement consent conditions attached to the assessment report.

Attachment/s:

1. Conditions of Consent - DA 8 2026 - 59 and 59A Hastings Avenue Chifley

D43/26



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 to regularise the use of unauthorised works constructed as-built to the existing attached dual occupancy at Nos. 59 and 59A Hastings Avenue, Chifley, including internal reconfiguration, changes to window locations and treatments, rear extensions, additional basement excavation, balcony and balustrade modifications, roof alterations and associated ancillary works undertaken as part of the unauthorised as-built development. The proposal also seeks variations to the building height and floor space ratio development standards under the Randwick LEP 2012.

The development application was notified in accordance with the Randwick City Community Engagement Strategy. One submission was received as a result of the notification process.

The subject site is identified as 59 and 59A Hastings Avenue, Chifley, and is legally described as Lot 64 in DP 36836. The site is not identified as a heritage item and is not located within a heritage conservation area.

The site is zoned R2 Low Density Residential under the Randwick Local Environmental Plan 2012. The unauthorised works are associated with the approved and existing use of the site as an attached dual occupancy, which is permissible with development consent in the zone. The proposal is generally consistent with the objectives of the zone and maintains the existing residential use of the site without resulting in significant adverse amenity or environmental impacts on surrounding properties or the established streetscape character.

The unauthorised works are distributed across the basement, ground floor and first floor levels of both dwellings. The works have resulted in an increase in gross floor area, including basement areas now captured as GFA, and a minor increase in overall building height. These matters are addressed by accompanying Clause 4.6 written requests.

The application was referred to Council's Building Regulatory team for review. While the proposal is acceptable from a planning perspective, the Council Building Surveyor advised that the information submitted is insufficient to confirm that the unauthorised works can be regularised. Additional documentation is required to address outstanding compliance matters and to demonstrate that the building is capable of meeting applicable safety and performance standards.

Overall, the proposal is considered capable of supporting the ongoing residential use of the site by improving internal layout and amenity, while maintaining a built form that remains broadly consistent with the approved development and surrounding context. However, it is not appropriate for development consent to operate until all building compliance issues have been satisfactorily resolved.

Accordingly, the proposal is recommended for a deferred commencement approval, with the imposition of deferred commencement conditions that require the submission of the following information and associated matters addressed:

- A report, prepared by a qualified building professional or registered certifier, in relation to the subject dual occupancy complying with the requirements of the Building Code of Australia (BCA)/National Construction Code (NCC) and all relevant Australian Standards. The BCA/NCC report must provide copies of all supporting certification and documents referred to in the report.
- Any recommendations from the above BCA report must be incorporated into the subject dual occupancy and any works required to be carried based on those recommendations must be completed. A detailed statement, prepared by a qualified building professional or registered Certifier, demonstrating this, must be provided to Council.
- A report from a qualified structural engineer confirming that all structural elements within in the subject dual occupancy comply with the relevant Australian Standards and all built/as-built components are structurally sound and suitable for safe occupation.

2. Site Description and Locality

The subject site is known as 59 and 59A Hastings Avenue, Chifley, and is legally described as Lot 64 in DP 36836. The land is currently developed with an attached dual occupancy, comprising two dwellings constructed over basement, ground and first floor levels.

The site has a frontage of approximately 15.24 metres to Hastings Avenue and a depth of approximately 33 metres, resulting in a total site area of 492.5 square metres. The allotment is generally rectangular in shape, with consistent side boundaries and a regular configuration that supports residential development.

A survey plan prepared by Nexus Survey Group, dated 11 August 2025, identifies the existing “as-built” development on the site. The survey documents the building footprint, boundary setbacks, overall height and other relevant built form elements, providing an accurate basis for assessing the unauthorised works.

Development consent DA/351/2023 previously approved the strata subdivision of the land into two separate allotments. The resulting strata lots each have an area of approximately 246.25 square metres and a frontage of approximately 7.62 metres to Hastings Avenue, reflecting the existing dual occupancy arrangement.

The site slopes downward from Hastings Avenue toward the rear (east), creating a fall across the depth of the property. The existing development responds to this topography through the incorporation of basement and lower ground level components, which are partially embedded into the slope.

The site is located within the R2 Low Density Residential zone under the Randwick Local Environmental Plan 2012. The surrounding locality is characterised predominantly by detached dwellings and dual occupancies, with a mix of older housing stock and more recent infill redevelopment consistent with contemporary built form trends.

To the west, directly opposite the site, is Chifley Sports Reserve, providing an open space interface and contributing to the visual character of the streetscape. The site is also situated in proximity to Botany Cemetery and Anzac Parade, a major arterial road providing regional connectivity.

Adjoining development includes a part two-storey/part three-storey dwelling to the north at No. 57 Hastings Avenue and a single-storey dwelling to the south at No. 61 Hastings Avenue. The broader streetscape contains several recently constructed two and three-storey dual occupancies, reflecting ongoing redevelopment and the evolving character of the area.

Development to the rear (east) comprises one and two-storey dwelling houses fronting Lasseter Avenue. The surrounding neighbourhood is undergoing incremental renewal, with low density residential development remaining the predominant land use pattern. The site is not identified as a heritage item and is not located within a heritage conservation area.

Figures 1 to 13 provide photographic documentation of the existing dual occupancy, including various as-built structures and components, some of which form part of the unauthorised works subject to this application.



Figure 1: Front of subject attached dual occupancy.



Figure 2: Basement extension comprising a rumpus room at No. 59A Hastings Avenue (southern dwelling).

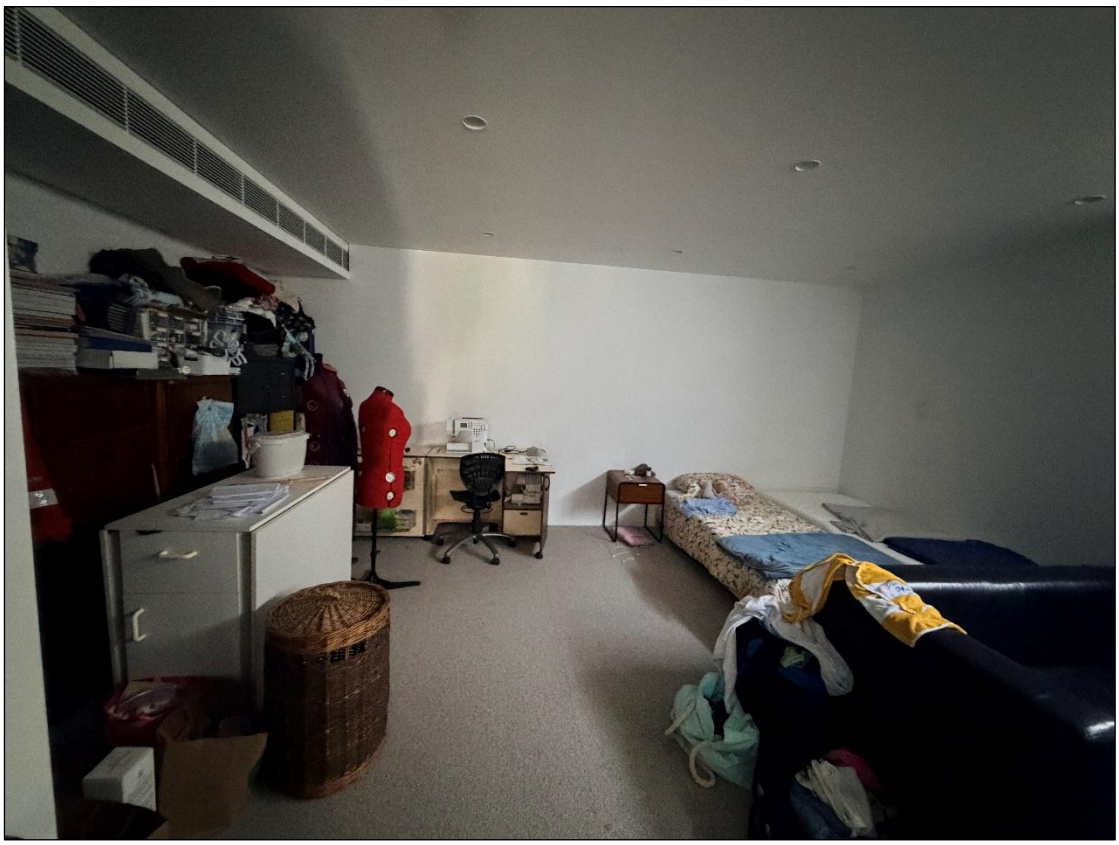


Figure 3: Basement extension comprising a rumpus room No. 59A Hastings Avenue (southern dwelling).



Figure 4: Front balcony – ground floor (extended) at No. 59A Hastings Avenue (southern dwelling).

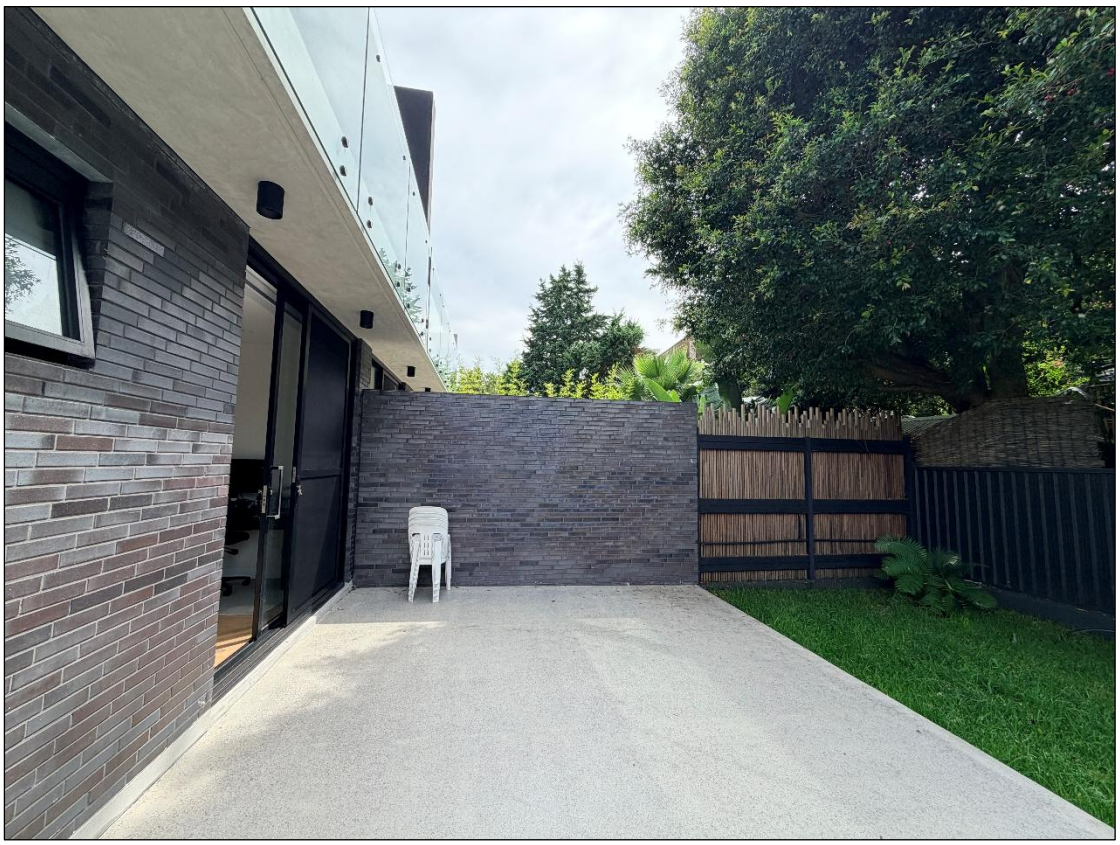


Figure 5: Rear yard – extended paved area at No. 59A Hastings Avenue (southern dwelling).



Figure 6: View of highlight window of basement rumpus room from side setback at No. 59A Hastings Avenue (southern dwelling).



Figure 7: Rear yard – extended paved area at No. 59A Hastings Avenue (southern dwelling).



Figure 8: First floor dining room and kitchen at No. 59A Hastings Avenue (southern dwelling).



Figure 9: First floor living room, dining room and kitchen at No. 59 Hastings Avenue (northern dwelling).



Figure 10: Living room – corridor and skylights – No. 59 Hastings Avenue (northern dwelling).



Figure 11: Front facing balcony – first floor with BBQ area at No. 59 Hastings Avenue (northern dwelling).



Figure 12: Rear yard at No. 59 Hastings Avenue (northern dwelling).



Figure 13: Rear yard – extended paved area at No. 59 Hastings Avenue (northern dwelling).

3. Relevant History

The subject site has been the subject of the following development applications and modifications:

- DA300/2016

  Development consent was granted by Randwick City Council on 12 October 2016 for the demolition of the existing and the construction of a two-storey attached dual occupancy development incorporating basement parking.

- DA/300/2016/A – Section 4.55(1) Modification

  Consent was granted on 1 June 2017 for minor modifications to the approved development, including adjustments to building setbacks (generally up to 500mm), relocation of the entry wall, and an increase in overall building height of approximately 700mm to accommodate basement requirements.

- DA/351/2023

  Development consent was granted on 6 July 2023 for the strata subdivision of the approved dual occupancy into two (2) separate lots. This consent has not been enacted.

- DA/300/2016/B Section 4.55(2) Modification

  An application was lodged seeking to amend the location and configuration of several windows. The application was refused by Council on 22 March 2023 on the grounds of insufficient documentation, failure to provide a BASIX Certificate in accordance with SEPP

(Building Sustainability Index) 2004, and non-compliance with the Randwick Development Control Plan 2013 provisions relating to visual privacy.

- DA/300/2016/C – Section 4.55(2) Modification

  A modification application was lodged in November 2024 seeking retrospective approval for unauthorised works, including changes to window types and locations, rear extension works, and internal layout alterations. Following legal advice, Council determined that the works could not be regularised under a modification application. The application was subsequently withdrawn.

4. Proposal

The proposal seeks development consent to regularise a series of unauthorised works undertaken to the approved attached dual occupancy development at 59 and 59A Hastings Avenue, Chifley. The application also seeks approval for associated variations to the development standards for building height and floor space ratio (FSR) under the Randwick Local Environmental Plan 2012.

The unauthorised works comprise a range of internal and external modifications across all levels of both dwellings. These include internal reconfiguration, alterations to window locations, sizes and privacy treatments, additional excavation and increased floor area at basement level, rear extensions at ground and first floor levels, balcony and balustrade modifications, and alterations to the roof form.

At basement level, the works include increased excavation resulting in additional floor area, conversion of storage rooms to habitable spaces, reconfiguration of garage layouts, and the infilling of previously approved voids. These changes have materially altered the functionality and classification of the basement areas.

At ground and first floor levels, the works include rear extensions that increase the building footprint, changes to window dimensions and treatments to address privacy and daylight access, internal layout reconfiguration, and modifications to balconies and balustrades that alter the presentation of the building to the rear and side boundaries.

Roof-level works include the installation of skylights and the extension of the roof structure to form an overhang, contributing to changes in the overall building height and external appearance of the development.

Collectively, the unauthorised works result in an increase in gross floor area, including basement areas now captured as GFA, and a measurable increase in the overall building height relative to both the approved plans and the applicable development standard.

The proposal seeks a variation to Clause 4.3 (Height of Buildings) of the Randwick LEP 2012. The amended development has a maximum height of approximately 9.8 metres, representing a 300mm (3%) variation to the 9.5-metre height standard, and an approximate 90mm increase relative to the height of the approved built form.

A variation to the FSR development standard is also sought. The revised FSR is approximately 0.93:1, which exceeds the 0.5:1 control applicable to the site. The exceedance arises primarily from the inclusion of basement areas within the GFA calculation, which were previously excluded or not accurately accounted for in earlier approvals.

The amended scheme reflects a total gross floor area of approximately 214.8m², equating to 107.4m² per dwelling.

Figures 14 to 22 illustrate the proposed development.

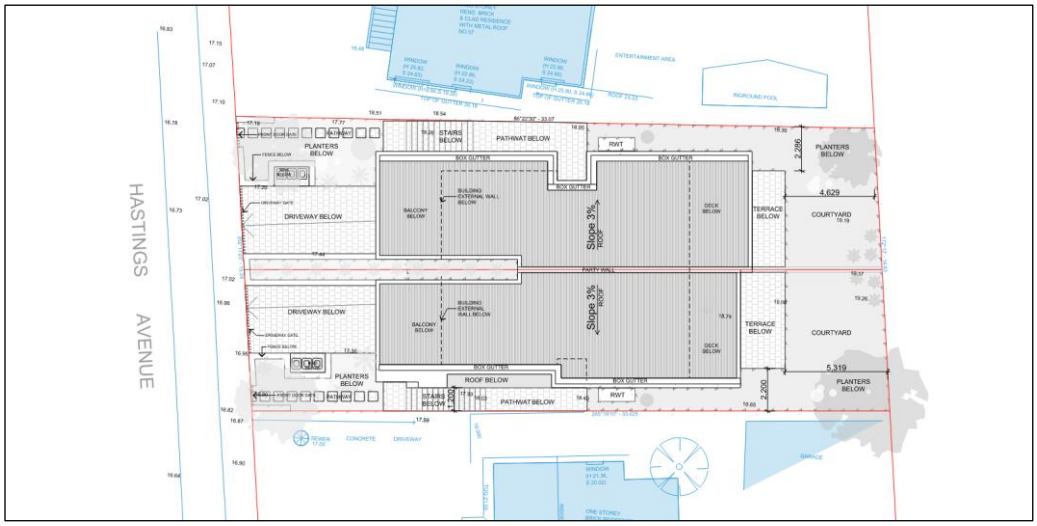


Figure 14: Site Plan.

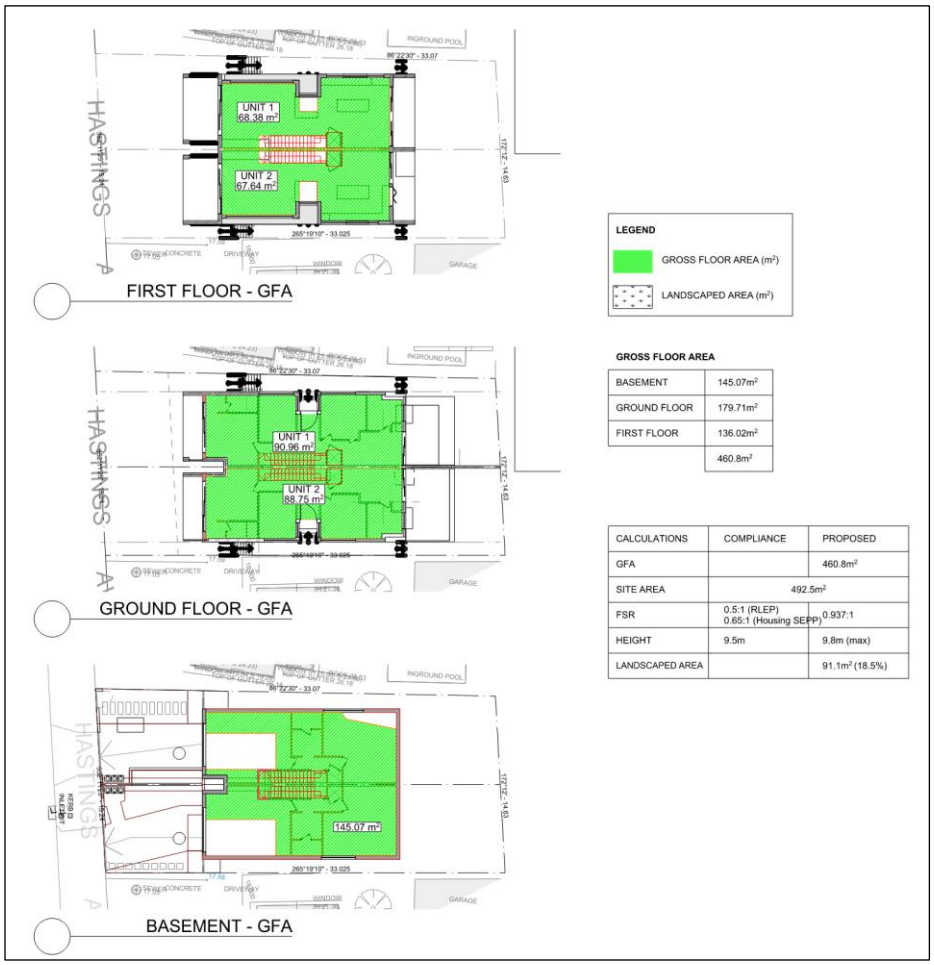


Figure 15: Amended Gross Floor Area (GFA) Calculation Plans.

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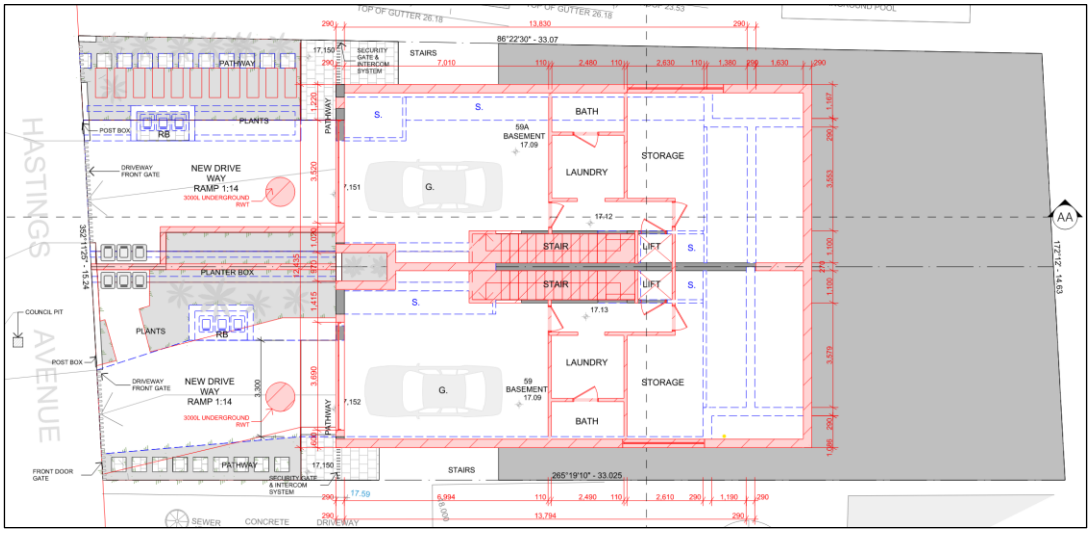


Figure 16: Basement Floor Plan.

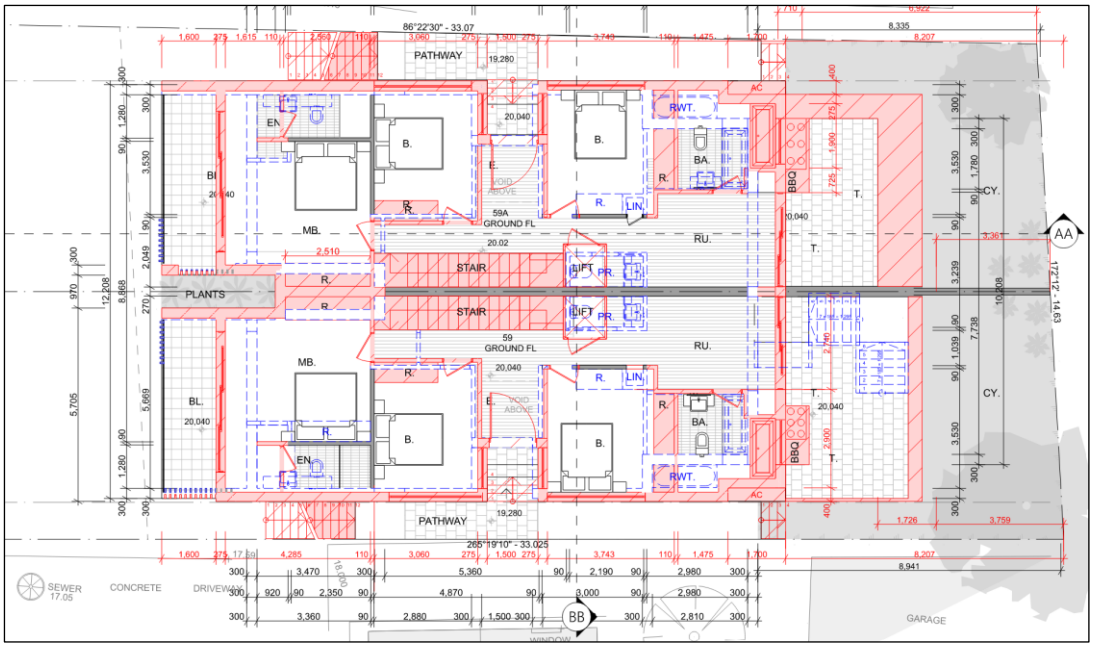


Figure 17: Ground Floor Plan.

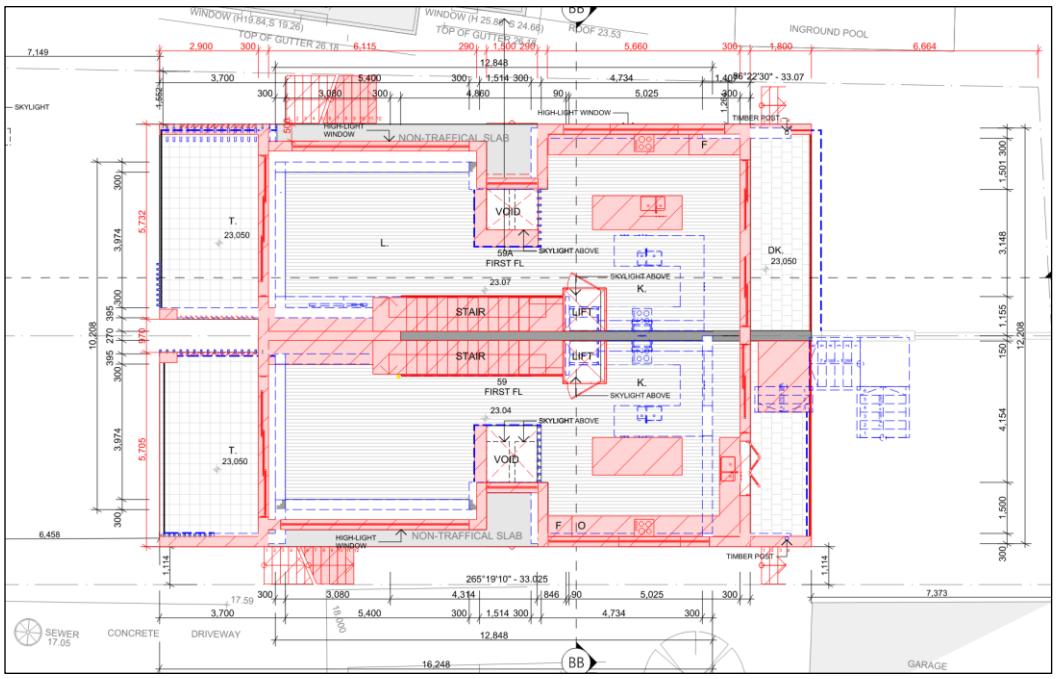


Figure 18: First Floor Plan.

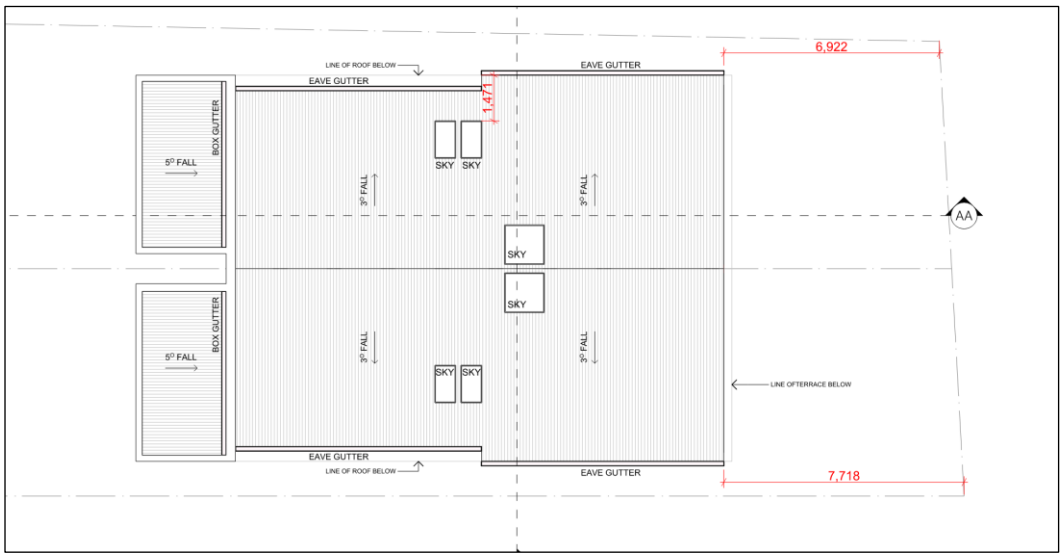


Figure 19: Roof Plan.

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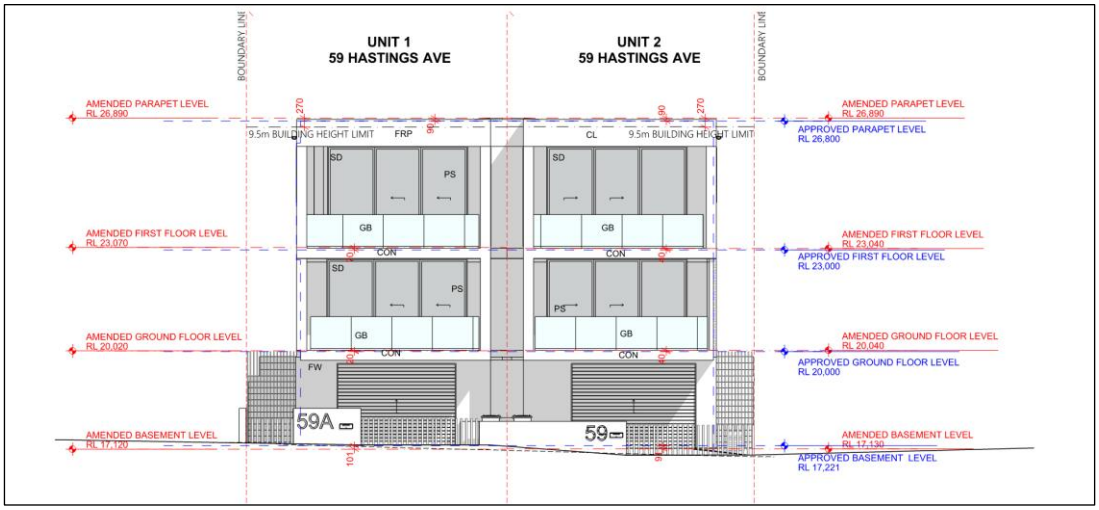


Figure 20: West (Street) Elevation.

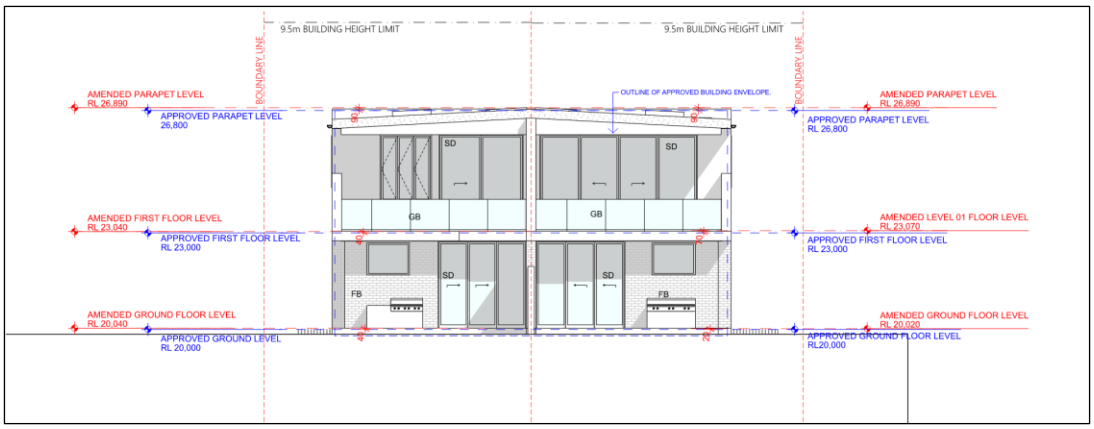


Figure 21: East (Rear) Elevation.

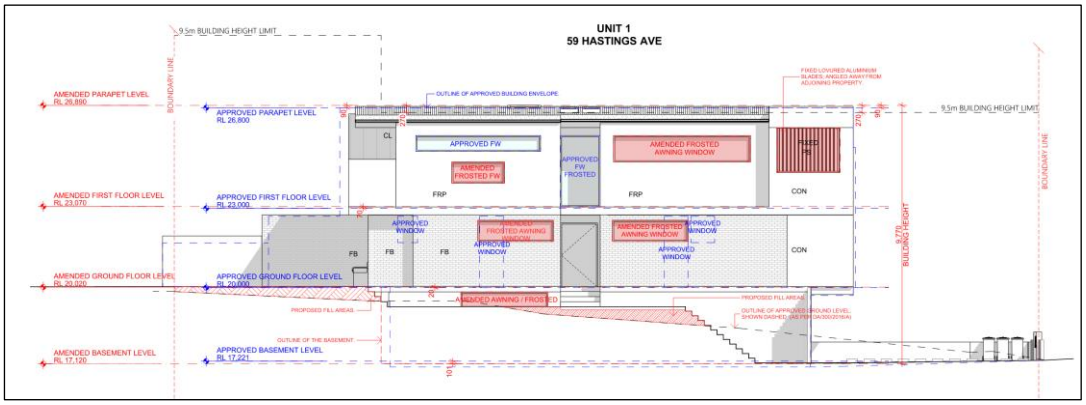


Figure 21: North Elevation.

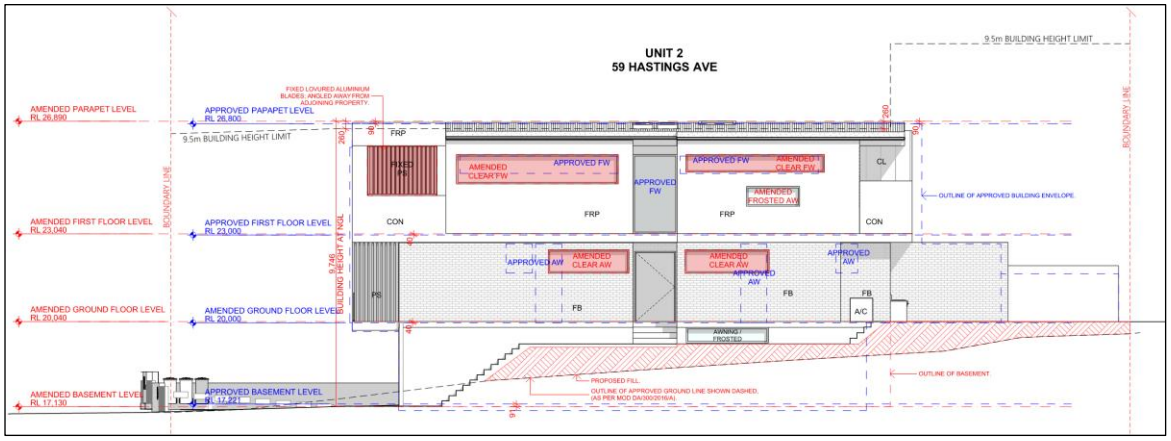


Figure 22: South Elevation.

This assessment is limited to those components of the development that were undertaken without development consent or that are not consistent with the previously approved development under DA/300/2016 and DA/300/2016/A. The assessment does not seek to regularise works that were approved under earlier consents but were carried out without the issue of a Construction Certificate or an Occupation Certificate. Those matters fall outside the scope of this assessment and will instead be addressed through the imposition of deferred commencement conditions requiring appropriate certification and compliance documentation.

Clause 4.6 written requests have been submitted with this application to justify variations to the development standards for floor space ratio under Clause 4.4 and building height under Clause 4.3 of the Randwick Local Environmental Plan 2012. These variations arise directly from the unauthorised works, which have resulted in exceedances of both standards. A detailed assessment of the Clause 4.6 requests, including consideration of whether the statutory tests for variation are satisfied, is provided in the Clause 4.6 section of this report.

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:

- 57 Hastings Avenue

Issue	**Response**
The submitter objects to the development application, stating that the proposal does not materially differ from previous modification applications and expressing dissatisfaction with the ongoing assessment process.	The current development application seeks consent to regularise unauthorised works undertaken to an existing approved attached dual occupancy. The proposal differs from previous modification applications in that it is assessed as a stand-alone development application, supported by Clause 4.6 written requests and a comprehensive planning assessment. The application has been assessed on its merits in accordance with the Environmental Planning and Assessment Act 1979.
Concerns are raised regarding overlooking from the front and rear balconies, including the operability of louvres and the lack of screening,	The potential for overlooking from balconies has been assessed against the privacy provisions of the Randwick Development

which are claimed to allow views into the submitter's bedrooms, swimming pool, backyard and internal living areas.	Control Plan. The development incorporates a combination of solid balustrade walls, privacy screens and angled louvres, which are designed to minimise opportunities for direct overlooking to adjoining properties. The rear balcony configuration is largely consistent with the approved development and does not result in unreasonable privacy impacts.
The submitter raises concerns that reconfigured and enlarged windows, including operable frosted windows, enable views into bedrooms and rear areas of the submitter's property.	Window modifications have been assessed against the visual privacy controls of the DCP. The amended windows incorporate highlight placement and frosted glazing, which substantially limit opportunities for overlooking. While some windows are operable, their sill heights, glazing treatment and orientation ensure reasonable privacy outcomes are maintained for adjoining properties.
Concerns are raised regarding smoke and cooking odours from a BBQ, noise and odours from a kitchen exhaust, and the ongoing location and operation of an air-conditioning unit.	Issues relating to the operation and siting of BBQs, kitchen exhausts and air-conditioning units are primarily building and compliance matters, rather than planning matters. These issues are not determinative of the planning assessment and are to be addressed through the imposition of deferred commencement conditions.
The submitter alleges that a security camera associated with the development has the potential to record the submitter's backyard.	The placement and operation of security cameras is not a matter regulated through development consent. Any concerns regarding surveillance are not a relevant planning consideration and may be addressed through other regulatory or civil mechanisms outside the planning system.
The submitter expresses concern that the development exceeds floor space ratio and height controls and that the size and bulk of the development is visually intrusive	The proposal exceeds the maximum floor space ratio and building height controls under the Randwick LEP 2012. These non-compliances are addressed through accompanying Clause 4.6 written requests, which have been assessed in detail within this report. It is considered that the variations are minor in built form terms, largely attributable to basement excavation, and do not result in unacceptable bulk, scale or streetscape impacts.
The submitter claims the development has adversely affected property value and seeks compensation for perceived loss of amenity.	Impacts on property value and claims for compensation are not relevant planning considerations under the Environmental Planning and Assessment Act 1979 and cannot

	be considered in the determination of the development application.

5.1. Re-notification

The proposed development did not require any re-notification during the assessment process, as no amendments were made that would result in additional environmental impacts or warrant further public consultation under Council's notification requirements.

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

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

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

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

6.2. SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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

6.3. Randwick Local Environmental Plan 2012 (LEP)

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

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

The proposal is consistent with the specific objectives of the R2 Low Density Residential zone in that it maintains the existing residential use, is compatible with the surrounding built form, and contributes to the character and amenity of the locality without resulting in adverse impacts.

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)	0.5:1	GFA – 461.20sqm 0.93:1	No, refer to 4.6 assessment
Cl 4.3: Building height (max)	9.5m	9.97m	No, refer to 4.6 assessment

6.3.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.5:1	0.93:1	215 m²	86%
Cl 4.3: Building height (max)	9.5m	9.97m	0.47m	5%

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

Clause 4.6 of RLEP 2012 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. Clause 4.6 exception to a development standard – Clause 4.3 Height of Buildings

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 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,

Applicant's assessment:

Objective (a) seeks "*to establish building heights that are consistent with the desired future character of the locality*". The desired future character of development is established by considering a range of factors. Commissioner O'Neill's decision in *Big Property Group Pty Ltd v Randwick City Council [2021]* NSWLEC 1161 accepted that the desired future character of an area cannot be determined by height and FSR standards alone and Acting Commissioner Clay in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020]* NSWLEC 115 found that adjacent buildings which exceeded the height controls should be considered when determining desired future character. Chief Justice Preston, (in the Appeal of that matter) concurred with this decision and confirmed that matters other than the development standards need to be considered including other developments that contravene the development standard.

When considering the character of development in the streetscape and immediate area, it comprises of low-density residential development and new contemporary developments comprising of two to three storey dwelling houses and a variety of dual occupancies. The character of the streetscape is changing, and modern infill development is creating a denser residential environment.

The proposed built form and design is consistent with the bulk and scale of the properties in the street. Given the steep topography of street where it rises from the south to the north, and given the cross fall many new developments exceed the height control at the front to achieve the architectural design and amenity outcomes.

New and renovated dwellings in the immediate locality are three storeys in form and expression when presented to the street. Refer to **Photo 1** below which is a three-storey attached dual occupancy development at No.53 Hastings Avenue and is similar in scale and form as the subject development. Although the architectural design and style may vary there is continuity and uniformity in the scale, height, siting and massing. The proposal has been designed and sited to respect the form of adjoining developments as such it is consistent with the desired future character of development in the streetscape.



Photo 1: similar three storey attached dual occupancy development at 53 Hastings Avenue.

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

Assessing officer comments: The site is not listed as a Heritage Item or within a Heritage Conservation Area.

(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.

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Applicant's assessment:

The height variation preserves the environmental amenity of neighbouring properties and public spaces. The area of the building which exceeds the control is essentially 30cm but only 9cm difference when compared to the approved height of the building. This minor area of variation forms part of the parapet which does not create any overlooking to immediately adjoining properties as there are no windows within the area of non-compliance (where the exceedance occurs).

The height exceedance does not impact on any views. Adjoining properties are orientated to face the park to the west and the area of variation does not block or affect view lines from properties at the rear which generally sit slightly lower than the subject site.

In respect to solar access, there is minimal additional overshadowing created by the variation that will not impact on habitable areas, private open space or public open space within the public domain. The additional height (300mm) will slightly extend the length of shadows but will maintain solar access compliance for immediately adjoining properties. **Figure 7 and 8** shows the additional shadowing at 9am and 3pm.

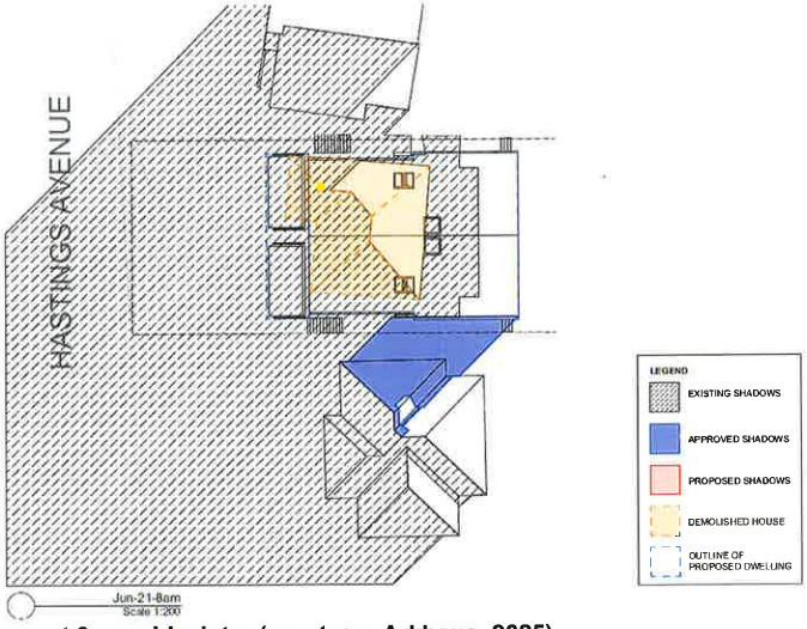


Figure 7: Shadow diagrams at 9am mid-winter (courtesy: Arkhaus, 2025)

The building height exceedance facilitates a building form that better reflects the residential character of the locality in the streetscape. All new dwellings and dual occupancies are three storeys in scale, and the existing building onsite reflects this scale and is consistent with the desired future character of development in the area. New developments reflect a three-storey scale with garage levels that are essentially below ground and two levels of habitable space above, a normal design and built form outcome and feature given the topography of the site and nature of the landform in the street.

The proposed development will achieve a better environmental, planning and design outcome for the site and is a development that will complement the character of new development and is considered to be a positive contribution to the streetscape.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

The development has been carefully designed to utilise and integrate basement areas which will not impact on the amenity of adjoining properties and will improve the functionality of the dwellings. The design of the development has been very well considered and carefully designed to create a high quality architectural and landscape design outcome. The modern and contemporary design is more in keeping with the desired future character of development in the streetscape and immediate low scale residential locality and neighbourhood.

There will be no adverse amenity or environmental impacts generated by the area of non-compliance regarding overlooking, overshadowing or view loss.

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

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:

Applicant's response:

> In *Initial Action*, the Court confirmed that "*environmental planning grounds*" are not clearly defined but are tied to the scope, purpose and intentions of the EP&A Act including the Objects in Section 13 of the Act. In this case the development is consistent with the objectives of the Act including promoting good design and amenity of the built environment, protecting the natural and cultural environment as the proposal will not impact on any conservation areas or items. The development is considered to be ecologically sustainable and BASIX compliant and will promote the social and economic welfare of the community by improving the quality, diversity and stock of housing in the area. The scheme satisfies the objectives of the EP&A Act.

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

Conclusion

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

7.2. Clause 4.6 exception to a development standard – Clause 4.4 Floor Space Ratio

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

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

The objectives of the Floor Space Ratio standard are set out in clause 4.4 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,*

Applicant's assessment: The three-storey scale of the development will remain unchanged. The two and three storey scale is consistent with adjoining development. The 9.5m height limit caters for a 3-storey scale and the additional floor space is largely at the rear below the existing ground level and where the building presents as two-storeys in scale.

The bulk and scale of the building as constructed is in keeping with other new developments in the street including the dual occupancy at 53 Hastings Avenue as shown below and other

developments like 47 Hastings a dual occupancy approved as a CDC106/2023 and the to create an interesting contemporary appearance that avoid the need for regular maintenance

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

Applicant's assessment: The Applicant's Clause 4.6 written request satisfactorily demonstrates that the relevant objectives of the development standards have been met and that sufficient environmental planning grounds exist to justify the proposed variations.

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

Applicant's assessment: Not applicable in this case as there are no heritage items, contributory buildings or conservation areas within close proximity that will be impacted or affected by this proposal. The visual catchment of heritage items is removed and the significance and integrity of the items and areas will not be affected. The additional height of 9cm (90mm) is considered minor and addressed in detail in the updated Clause 4.6 Statement in respect to Building Height.

The closest heritage items are Long Bay Goal (I187) and the Chinese Market Gardens (I246) both are not visible from the subject site.

(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

Applicant's assessment: Complies — This objective relates to the potential amenity impacts that may arise from the development, including privacy and overlooking, overshadowing, visual bulk, and any effects on views or outlook. It is concerned specifically with the scale of the development and whether it results in unreasonable amenity impacts on adjoining properties or the broader locality.

In relation to visual bulk, the additional floor space does not materially increase the perceived massing of the building. The additional GFA is located below ground level within the basement at the rear of the site and is not visible from the public domain or adjoining properties. As outlined earlier, the dwelling exhibits a well-considered architectural form, incorporating modulation and indentations along the side elevations that effectively break up the bulk and provide articulation consistent with contemporary residential design.

The offsetting of window openings and the installation of privacy screens ensure that no adverse overlooking impacts are generated for neighbouring properties. These elements are not new and form part of the previously approved design response. Most windows are either frosted or configured as highlight windows, thereby eliminating direct lines of sight. The additional floor space does not introduce any new opportunities for overlooking, nor does it result in view loss or increased overshadowing.

Solar access to adjoining properties remains compliant with the requirements of the Randwick Development Control Plan, and the proposal does not alter the approved overshadowing outcomes.

The development does not obstruct any iconic or significant views, nor does it compromise outlook from adjoining properties toward key public domain features, including the parkland located opposite the site.
With respect to the amenity of the locality, the proposal will not detract from the quality or character of the public domain. The presentation of the development to the street remains modern and

contemporary, with no change to the approved scale, materials, or fenestration, aside from the installation of balcony privacy screens along the side elevations. These screens are more solid in appearance, with louvre openings smaller than those required under the original approval, thereby improving privacy outcomes. The surrounding streetscape is varied in architectural style and character, and the proposal remains compatible with this context.

The Applicant's written justification demonstrates that this objective is satisfied, noting that the exceedance of the Floor Space Ratio (FSR) development standard arises solely from additional floor area at the lower ground level, which does not generate adverse amenity impacts.

Assessing officer's comment: In conclusion, the Applicant's written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case. The unauthorised works are limited to additional floor space within the laundry, entertainment area and sub-floor structure at the lower ground level, and do not alter the approved building height, setbacks or overall building envelope. The additional floor area is not visible from the public domain or adjoining properties and does not result in any additional visual bulk, scale or amenity impacts.

The submitted Clause 4.6 written request demonstrates that the proposal continues to satisfy the objectives of Clause 4.4 (Floor Space Ratio) of the Randwick Local Environmental Plan 2012 and is consistent with the objectives of the R2 Low Density Residential zone. Accordingly, it is considered that the written request has satisfactorily addressed the requirements of Clause 4.6(3)(a).

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

The Applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the floor space ratio development standard as follows:

Applicant's response: Furthermore, in Initial Action, the Court confirmed that "environmental planning grounds" are not clearly defined but are tied to the scope, purpose and intentions of the EP&A Act including the Objects in Section 13 of the Act. In this case the development is consistent with the objectives of the Act including promoting good design and amenity of the built environment, protecting the natural and cultural environment as the proposal will not adversely impact on any conservation areas or heritage items. The development is considered to be a compliant ecologically sustainable and BASIX compliant development and will promote the social and economic welfare of the community by improving the quality, diversity and stock of housing in the area. The scheme therefore satisfies the objectives of the EP&A Act.

Assessing officer's comment: In conclusion, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the floor space ratio development standard. The grounds relied upon are relevant to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 and are specific to the nature of the non-compliance.

The proposal is consistent with the objects of the Act, including the promotion of good design and amenity of the built environment, and does not result in adverse impacts on the natural or cultural environment, noting the site is not located within a heritage conservation area and is not identified as a heritage item. The development is also supported by appropriate sustainability measures and is BASIX compliant, and will contribute to the social and economic welfare of the community through the continued provision and improvement of residential accommodation.

Accordingly, it is considered that the Applicant has satisfactorily addressed the requirements of **Clause 4.6(3)(b)** of the Randwick Local Environmental Plan 2012.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

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

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 'Matters for Consideration'	Comments
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

Additional Works to be Incorporated into the Development Application and As-Built (Unauthorised) Works

Following discussions with the Applicant, Council identified that levelling and fill works had been undertaken along the northern and southern side boundaries that were not expressly approved under the previous modification consent. The approved modification under DA/300/2016/A indicated that the existing ground levels along the side boundaries were to be retained, with landscaping provided in these areas. No approval was granted for the placement of fill or alteration of ground levels along these boundaries.

As a result, the levelling and fill works as constructed were not authorised under the existing development consents. Council therefore requested that these works be formally incorporated into the current development application to enable a complete assessment and, where appropriate, regularisation of the unauthorised works.

The Applicant has subsequently included the levelling and fill works in the latest revision of the architectural plans, clearly identifying the extent and location of the fill along both side boundaries. Importantly, the incorporation of these works does not alter the approved building footprint, height, setbacks, or the overall building envelope previously endorsed under DA/300/2016/A.

It is noted that the bulk, scale and massing of the development were already considered and approved under DA/300/2016/A. Any amenity impacts associated with that approved built form, such as visual bulk, privacy, overshadowing and streetscape presentation, were assessed at that

time. The inclusion of the side boundary levelling and fill works does not introduce any additional or new impacts in relation to these matters.

Accordingly, while the levelling and fill works required inclusion in the current development application for completeness and to facilitate regularisation, they do not alter the approved built form or give rise to any unacceptable environmental or amenity impacts.

10. Conclusion

That the application to regularise unauthorised works associated with the existing attached dual occupancy at 59 and 59A Hastings Avenue, Chifley be approved by way of a Deferred Commencement consent, subject to conditions, for the following reasons:

- The proposal is consistent with the relevant objectives and development standards of the Randwick Local Environmental Plan 2012, noting that the variations to floor space ratio and building height are satisfactorily justified under Clause 4.6.
- The proposal is consistent with the objectives of the R2 Low Density Residential zone, in that it provides for ongoing residential use within a low-density environment and maintains the established residential character of the locality.
- The scale and design of the development are appropriate for the site and compatible with the desired future character of the locality, having regard to surrounding development, site topography and the previously approved built form.
- The unauthorised works do not result in unacceptable impacts on the amenity of adjoining or neighbouring properties, including in relation to visual bulk, privacy, solar access or views. The additional floor space is largely contained below ground level and is not visible from the public domain.
- The proposal maintains a built form that is generally consistent with the previously approved development, while improving internal functionality and amenity outcomes for the dwellings.
- The proposal represents a more efficient and functional use of the site, with internal modifications improving the usability of spaces without altering the approved external building envelope in a way that would generate adverse impacts.
- The development contributes to housing diversity within the locality, supporting the ongoing provision of dual occupancy housing stock in an area where such forms are permissible and increasingly common.
- The proposal does not compromise the environmental performance of the development, with no adverse impacts on stormwater management, site drainage, or the natural environment arising from the regularisation of the works.
- The works do not adversely affect the safety, structural integrity or serviceability of the building, subject to the submission of the required structural and BCA/NCC compliance documentation under the Deferred Commencement conditions.
- The proposal ensures orderly and proper planning by bringing unauthorised works into a compliant and regulated framework, enabling Council to impose appropriate conditions and ensure the development meets relevant standards.

- The regularisation of the works provides a clear compliance pathway, ensuring that the development can be certified as safe, structurally adequate and consistent with legislative requirements.

- The proposal does not set an undesirable planning precedent, as the variations sought are site-specific, supported by Clause 4.6 requests, and justified on the basis of the unique circumstances of the development.

- The development remains compatible with the existing and emerging character of the area, noting the prevalence of contemporary dual occupancies and incremental redevelopment within the surrounding streetscape.

- The Deferred Commencement mechanism provides an appropriate safeguard, ensuring that all outstanding building compliance matters are resolved prior to the consent operating, thereby protecting public safety and ensuring regulatory integrity.

While the proposal is acceptable in planning terms, a number of outstanding building compliance matters remain unresolved. It is therefore appropriate that the consent be issued as a Deferred Commencement approval, requiring the Applicant to submit the following information and satisfactorily address all associated matters before the consent can operate:

- A Building Code of Australia (BCA) / National Construction Code (NCC) compliance report, prepared by a suitably qualified building professional or registered certifier, confirming that the dual occupancy complies with all applicable BCA/NCC provisions and relevant Australian Standards. The report must include copies of all referenced certificates, test reports and supporting documentation.

- Implementation of all recommendations contained within the BCA/NCC report, including completion of any required rectification or upgrade works. A detailed statement prepared by a qualified building professional or registered certifier must then be submitted to Council confirming that all recommended works have been completed and that the building is compliant.

- A structural adequacy report prepared by a qualified structural engineer, verifying that all structural elements within the dual occupancy comply with the relevant Australian Standards and confirming that all built and as-built components are structurally sound and suitable for safe occupation.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received to regularize the use of a series of unauthorised works to the existing attached dual occupancy at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by Arkhaus and dated 02.12.2025;*
- *Statement of Environmental Effects by L Ozog*

General Comments
Development Engineering has reviewed the submitted plans / details and advise that there are no Development Engineering or Landscaping conditions / requirements in relation to this application

1.2. Compliance Officer

Regularisation of a series of unauthorised works to an existing attached dual occupancy including modifications to window sizes and locations, internal layout and design changes, extension of the building along basement, sides and rear and an increase in height and floor space (Variations to Maximum Building Height and Floor Space Ratio).

Comments:

I refer to my earlier memo, dated 14 January 2026, in relation to comments made about the series of unauthorised building works to the existing attached 2 storey dual occupancy.

I have noted the contents of the latest architectural plans, and you are advised of comments on the following;

a. *The height variance being between 90mm to 100mm which is due to the levels being taken from the approved Section 4:55 plans (referred to in the approved CC plans), as opposed to the original DA plans.*

   The height variance is considered to be reasonable and within limits.

b. *The issue of the Floor Space Ratio which is 0:93:1 which is to be assessed by the assessment planner.*

c. *The skylight on the roof being less than 900mm from the side boundary which is the Fire Source Feature.*

   The owner has provided an Advisory Report, prepared by CSIRO dated 26 May 2022, advising that the glass skylight complies with NCC 2022 Volume 1 C2D10 as it is a non combustible building element.

   The owner has also provided a Skylight Installation Compliance Certificate, dated 28 April 2026, in relation to the skylights being installed in accordance with the manufacturer's instructions, NCC 2022 for Class 1 buildings and AS 1288 – 2021 (Glass in buildings) and AS 4285 -2019.

d. The amended architectural plans show the non – complying extension to the rear of the basement level to be used for storage.

I have no objection to the abovementioned changes but the following additional information is required;

a. The submission of a report, prepared by a Registered Certifier, in relation to the new dual occupancy complying with the requirements off the Building Code of Australia (BCA)/National Construction Code (NCC) and all relevant Australian Standards.
The BCA/NCC report must provide copies of all supporting certification and documents referred to in the report.
b. The submission of a report from a structural engineer for all structural elements involved in the new dual occupancy.

Recommendation:

The Development Application be deferred pending the submission of the following additional information;

a. The submission of a report, prepared by a Registered Certifier, in relation to the new dual occupancy complying with the requirements off the Building Code of Australia (BCA)/National Construction Code (NCC) and all relevant Australian Standards.
The BCA/NCC report must provide copies of all supporting certification and documents referred to in the report.
b. The submission of a report from a structural engineer for all structural elements involved in the new dual occupancy.

Assessing Officer comments:

Background and Chronology in trying to obtain documents for the compliance officer.

On 10 February 2026, Council issued an initial request for additional information seeking clarification of outstanding building compliance matters associated with the development application. The requested documentation included:

- A BCA/NCC Compliance Report prepared by a Registered Certifier confirming compliance with the National Construction Code and relevant Australian Standards;
- Structural certification for all structural elements of the development; and
- A schedule of Critical Stage Inspections undertaken by the Principal Certifier.

In response, the applicant advised that the requested compliance documentation was more appropriately addressed at the Building Information Certificate (BIC) stage and sought confirmation that sufficient information had been provided for the purposes of the current Development Application. Council's Building Compliance Officer subsequently advised that the requested compliance information must be submitted and resolved as part of the current Development Application, noting concerns that the development had been occupied prior to the issue of an Occupation Certificate and therefore required confirmation of structural adequacy and NCC compliance before consent could be granted.

A site inspection was undertaken on 25 February 2026 by Council officers, the owners of both dwellings and Council's Building Compliance Officer to review the extent of the unauthorised works.

The inspection identified discrepancies between the approved plans and the as-built development, including that the basement floor level had been constructed higher than approved, and that part of the rear basement extension at No. 59A was being used for habitable purposes, despite not complying with NCC requirements for natural light and ventilation. Council officers advised that the basement area must be restricted to non-habitable use and that the architectural plans required amendment to reflect the correct approved levels. Additional concerns were also raised regarding the absence of clarity surrounding critical stage inspections and the involvement of the private certifier.

Following the site inspection, Council undertook further assessment of the application and on 24 March 2026, issued a formal request for revised architectural plans, corrected GFA calculations, confirmation of skylight fire safety compliance, and additional building certification, noting these matters needed to be resolved prior to determination of the Development Application.

On 21 April 2026, Council issued a further request seeking updated plans, a revised Clause 4.6 written request, and additional skylight information to address basement use, boundary fill works and outstanding compliance matters prior to referral of the application to the Local Planning Panel.

In response, on 24 April 2026, the applicant submitted the CSIRO Advisory Report FCO-2046, which confirmed that the Velux skylight system is capable of complying with the non-combustibility requirements of NCC 2022 Clause C2D10. Council subsequently advised that project-specific installer certification was also required to confirm that the skylights installed on site matched the system assessed in the CSIRO report and had been installed accordingly.

On 11 May 2026, the applicant submitted updated Clause 4.6 written requests, skylight documentation, and revised as-built architectural plans in response to Council's Requests for Information. During further assessment, Council identified a minor numerical discrepancy in the height variation calculations, and on 18 May 2026 requested an updated Clause 4.6 statement to reflect the correct as-built height of 9.97 metres, representing a 470mm (approximately 4.9%) variation above the development standard. Council also requested the submission of outstanding Structural Adequacy Certification and any other BCA/NCC documentation referenced in the certifier's statement.

On 19 May 2026, the applicant provided three structural certificates referenced by the certifier. However, on 20 May 2026, Council advised that the certification was incomplete, as certification for the first floor slab and roof framing had not been provided, and that no comprehensive BCA/NCC compliance report had been submitted. As a result, Council advised that approval of the unauthorised works could not be recommended at that time.

On 26 May 2026, Council reiterated its request for a detailed BCA/NCC compliance report addressing the as-built works and clarifying any outstanding minor compliance matters prior to referral to the Local Planning Panel. The applicant maintained that the provision of a detailed BCA/NCC report was not required at the Development Application stage and queried whether this documentation could instead be conditioned to be provided prior to the issue of a Building Information Certificate or Occupation Certificate.

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

CLAUSE 4.6 STATEMENT
(updated)

EXCEPTIONS TO DEVELOPMENT STANDARDS – FLOOR SPACE RATIO, CLAUSE 4.4 RANDWICK LEP 2012

Approval is sought to regularise the use of unauthorized building works to the existing attached dual occupancy which include modifications to window sizes and locations, internal layout and design changes and an extension to the building in the basement and along the sides and rear at the ground floor.



Front elevation of No.59A and 59 Hastings Avenue, Chifley (subject site)

PREPARED BY

Larissa Ozog
URBAN PLANNER

8 May 2026 (updated)

1. ***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.***
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that 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. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

The number of ways to justify the variation as presented by Preston CJ above are provided above are considered extensive and not all tests need to be satisfied. This statement will focus on the first test as noted in bold above.

Table 1 – Extract of Clause 4.6 from RLEP

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)*

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 and 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 the RLEP 2012 accordingly. Refer to the SEE report for a detailed discussion in respect to this point.

Variation in area	nil	Approx. 214.8sqm (107.4sqm per dwelling)
Variation as a %	nil	87%

It should be noted that the original DA300/2016 approved the development at 0.50:1 and then a modification to the original DA, MOD300/2016/A approved a series of amendments namely an increase in floor area to permit an overall FSR of 0.54:1 (total of 266sqm) in floor space. In respect to the original DA and the modifications two issues should be considered when determining this variation;

- The GFA was not correctly calculated in both applications and areas like stairs were excluded etc that should have been included. Therefore, the GFA was never correctly calculated.
- There was an area in the basement designated as storage which was not included as gross floor area in accordance with the definition as it was located in the basement however that area has been extended and slightly enlarged and given it's no longer a basement level the storage area is now not excluded in the GFA. The additional storage space in the garage would normally be excluded in accordance with the GFA definition however this area is already excavated and has created a new ground level and is therefore included.
- The amended proposal seeks approval for an extended area of the basement to be used as storage.

This application is updating all the calculations and providing an accurate account of the GFA across the site.



Figure 1: FSR map showing Hastings Avenue and the subject site (courtesy RLEP)

Clause 4.4 of the RLEP 2012 and its "*Floor Space Ratio Map*" prescribes the statutory floor space ratio (FSR) limit for the subject site which permits a maximum FSR of 0.5:1 for this Site. However, Clause 4.4A provides exceptions for low scale development types in the R2 and R3 zones as mentioned above. Subclause 4.4(2) provides greater flexibility and allows for a greater amount of floor space for semi-detached dwellings or an attached dual occupancy development depending on the site area. Unfortunately, this proposal and the existing development is not captured and cannot take advantage of these provisions.

Given the site area is 492.5sqm it doesn't satisfy the provisions of Clause 4.4A since the subdivision approval has not been formally registered therefore a maximum FSR of 0.5:1 is applicable in accordance with the RLEP mapping. In this instance it is considered that the controls are somewhat of an anomaly given the attached dual occupancy development has been approved (and constructed) and a subdivision has also been approved, and this situation hasn't been considered in the drafting of



Figure 2: Updated GFA calculation plans courtesy Arkhaus, 2026

This DA seeks approval through the "regularization of the use" process for some additional floor space by the extension of the storage area in the basement at rear but also accurately depicting the total GFA. The GFA plans have been updated to accurately include all areas and provide for an FSR of 0.936:1. This exceeds the 0.5:1 control and as such a detailed Clause 4.6 Statement is required to justify the variation.

The variation seems significant and amounts to approximately 214sqm approximately 107sqm per dwelling. This includes the 20sqm which has already been approved as part of the modification application (DA300/2016/A) and includes the whole storage area in the basement. It should be noted that approximately 145.07sqm is located in the basement/garage level and some of this space was originally approved as storage area which was excluded from GFA at the time of assessment.

If the basement area (145sqm) was excluded from the calculation the total GFA would be 315.8sqm which amounts to an FSR of 0.64:1, which is consistent with other dwelling houses, semi-detached or attached dual occupancies in the area. This would not be inconsistent with the desired future character for this type of development, and it is reflective of the nature of contemporary dual occupancies in the area.

The Clause 4.6 Statement aims to justify the exceedance in this case and confirms that the proposed bulk and scale of the development is in keeping with development in the area and satisfies the floor space control objectives and does not adversely affect the environment, character of the streetscape or negatively impact adjoining properties.

- The additional GFA and reconfiguration of spaces improves the functionality and amenity of spaces improving the longevity of the home and allowing occupants to age in place.
- The development and its building envelope is consistent with that of new two to three storey developments in the streetscape.
- The built form as proposed is consistent with the desired future character for development in this area which is undergoing a transition with new high-quality attached dual occupancy developments being constructed in the immediate precinct.
- The variation to the floor space is considered minor and there is no change to the approved sale of the development which is in keeping with that of adjoining properties ie 57 Hastings Avenue (refer to **Photo 1** below).

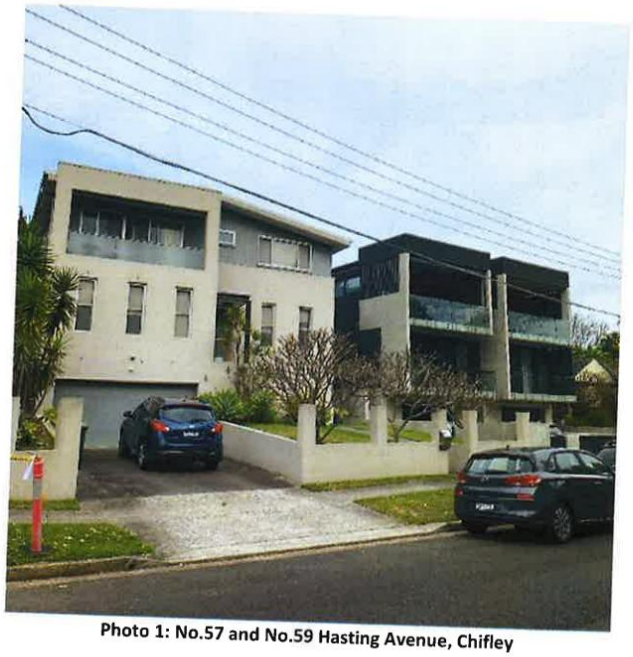


Photo 1: No.57 and No.59 Hasting Avenue, Chifley

3.1 Objectives of Clause 4.4 – Floor Space

Despite the non-compliance, the proposal satisfies the objectives of the development standard as demonstrated in the following table.

Table 2: Compliance with the objectives of the development standard

Consistency with the objectives of the floor space standard in the RLEP	
Objectives	**Assessment**
4.4(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	The three-storey scale of the development will remain unchanged. The two and three storey scale is consistent with adjoining development. The 9.5m height limit caters for a 3-storey scale and the additional floor space is largely at the rear below the existing ground level and where the building presents as two-storeys in scale. The bulk and scale of the building as constructed is in keeping with other new developments in the street including the dual occupancy at 53 Hastings Avenue as shown below and other developments like 47 Hastings a dual occupancy approved as a CDC106/2023 and the

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Clause 4.6 – Floor Space

	to create an interesting contemporary appearance that avoid the need for regular maintenance.
Nd 4.4(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	**Not applicable** in this case as there are no heritage items, contributory buildings or conservation areas within close proximity that will be impacted or affected by this proposal. The visual catchment of heritage items is removed and the significance and integrity of the items and areas will not be affected. The additional height of 9cm (90mm) is considered minor and addressed in detail in the updated Clause 4.6 Statement in respect to Building Height. The closest heritage items are Long Bay Goal (I187) and the Chinese Market Gardens (I246) both are not visible from the subject site.
4.4(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.	**Complies** - This objective relates to the potential amenity impacts that could be generated by the development in respect to privacy/overlooking, overshadowing, bulk and its possible impact on views or outlook. It relates specifically to the "scale" of the development and its potential impact on amenity. In relation to visual bulk, the additional floor space will not adversely affect the bulk and scale of the building as the additional floor space is located below ground in the basement at the rear and is not visible. As previously mentioned, the dwelling has been well designed and modulated with indentations in the built form along the side elevations to break up the bulk and articulate the built form. The off-setting of window openings and provision of privacy screens eliminates adverse amenity impacts in terms of overlooking to immediately adjoining properties. These however are not new elements. Most windows are frosted and highlight windows so there is no potential for overlooking. The additional floor space will not create any privacy, overlooking, view loss or overshadowing impacts. Solar access remains compliant with the Randwick DCP. There will be no obstruction to any iconic or important views or vistas or outlook for any adjoining properties to key public domain areas ie the parkland across the road. In relation to adversely impacting on the amenity of the locality, the proposal will not have a detrimental impact on the public domain. The presentation of the development to the street is a modern and contemporary form and there is no change to the scale, materials or fenestration apart from screens along the side elevations of the balconies with the screens proposed being more solid in appearance and as the louvres have smaller openings than required and conditioned by the original approval. The streetscape does not exemplify any consistent architectural design, pattern or form. Properties are varied and diverse in their design and character.

The detailed discussion above justifies that in this case strict compliance with the development standard is unreasonable and unnecessary given that the proposal has been designed to satisfy the objectives of the development standard (Clause 4.4 - floor space). The design and form of the dual

Furthermore, in Initial Action, the Court confirmed that "*environmental planning grounds*" are not clearly defined but are tied to the scope, purpose and intentions of the EP&A Act including the Objects in Section 13 of the Act. In this case the development is consistent with the objectives of the Act including promoting good design and amenity of the built environment, protecting the natural and cultural environment as the proposal will not adversely impact on any conservation areas or heritage items. The development is considered to be a compliant ecologically sustainable and BASIX compliant development and will promote the social and economic welfare of the community by improving the quality, diversity and stock of housing in the area. The scheme therefore satisfies the objectives of the EP&A Act.

Conclusion

For reasons mentioned herein, this Clause 4.6 report is considered to be well founded and has been prepared in support of the development proposal at 59 and 59A Hastings Avenue, Chifley and it is requested to be looked upon favourably by the consent authority.

It is considered that strict compliance with the development standard in respect to the floor space for the site in this particular case is unreasonable and unnecessary for a number of reasons which are detailed above.

The variation to the floor space control satisfies the objectives of the floor space control (Clause 4.3) of the Randwick Local Environmental Plan 2012 (RLEP) and this statement has been well founded and should be supported on the grounds specified in the report.

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CLAUSE 4.6 STATEMENT
(updated)

EXCEPTIONS TO DEVELOPMENT STANDARDS – BUILDING HEIGHT, CLAUSE 4.3
RANDWICK LEP 2012

Approval is sought to regularise the use of unauthorized building works to the existing attached dual occupancy which include modifications to window sizes and locations, internal layout and design changes and an extension to the building in the basement and along the sides and rear at the ground floor.



Existing front elevation of No.59A and 59 Hastings Avenue, Chifley (subject site)

PREPARED BY

Larissa Ozog
URBAN PLANNER

8 May 2026 (updated)

2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that 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. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

The number of ways to justify a variation as presented by Preston CJ above are considered extensive and not all tests need to be satisfied. This statement will focus on the first test as noted in bold above.

Table 1 – Extract of Clause 4.6 from RLEP

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)

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 and 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 is 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 the RLEP 2012 accordingly. Refer to the SEE report for a detailed discussion in respect to this point.

2.0 Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 (Building Height) of the *Randwick LEP 2012 (RLEP)* which stipulates a maximum Building Height of **9.5m** for this site as demonstrated on the map at **Figure 1** below.

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which is considered a minor variation. However, the former Section 96 application (DA/300/2016/A) approved an overall height of RL26.8 (some 700mm higher than the originally approved building) so the completed building is only 9cm or 90mm higher than the approved (modified) height and this application is therefore seeking to permit the additional 9cm (90mm) in height difference. **Table 2** below summarises the extent of the variation.

Table 2: Height compliance table

Control	Required	Proposed
Clause 4.3 RLEP 2012 Building Height	Maximum Height control 9.5m Translated to RL26.59	*Top of Parapet* RL26.89 *Basement/Ground Level* RL17.12 minus 200mm (slab) = RL16.92 Height of building = 9.97m
Variation		*470mm* 4.9% ***Note:** The height of the building was approved at RL26.8 so the actual non-compliance is 9cm or 90mm which amounts to a variation of 1% when compared to the approved height.*

As noted above, the actual physical difference in the height of the building is only 9cm as the modification approved a height of RL26.8 and the finished 'as built' height is RL26.89 so despite the basement level or the garage level being slightly lower (approximately 100mm lower than the approved modification application) creating a greater overall non-compliance however the physical difference is negligible (9cm or 90mm).

Although the exceedance in the height is consistent across the whole length of the building the height variation is greatest at the front as the building presents as a three-storey form whilst at the rear it is only two storeys, and the third level is situated below ground. This excavated area artificially alters the existing ground floor level across the site and largely creates the non-compliance as it becomes the new 'ground floor' despite its excavated nature. Originally the basement level would not have been included as it was clearly below the existing ground level at the time however after construction it becomes the new ground level.

The characteristics of this property (post construction) closely reflect those of the *Merman v Woollahra Council* case where a portion of the site was excavated for the construction of the existing building, and the ground level was lowered by the excavation within the footprint of the existing building. In this case the proposed development exceeds the 9.5m height control due to this factor. The excavated, sub-basement area does not reflect the true nature of the site and its topography, and the excavated area distorts the maximum height plane at the centre and rear of the building (where it would largely present as a sub-basement area).

The variation to the height has been extrapolated by using the "existing floor levels" off the "as built" survey plan which is shown at **Figure 2**. Originally the plans submitted with the DA related to the originally DA approved levels of the building not the levels modified by the Section 96 application (DA/300/2016/A) which approved an increase in the height of the building by 700mm. The updated and modified plans update this detail.

Figures 3 and **4** show the existing side elevations of the completed dual occupancy and the degree of variation and exceedance of the 9.5m height control. The height line is highlighted in yellow.

3.1 Objectives of Clause 4.3 – Building Height

It is considered that strict compliance with the development standard in respect to building height (Clause 4.3) for the site in this particular case is unreasonable and unnecessary because the proposal satisfies the objectives of the height control which include the following;

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

Objective (a) seeks "*to establish building heights that are consistent with the desired future character of the locality*". The desired future character of development is established by considering a range of factors. Commissioner O'Neill's decision in *Big Property Group Pty Ltd v Randwick City Council [2021]* NSWLEC 1161 accepted that the desired future character of an area cannot be determined by height and FSR standards alone and Acting Commissioner Clay in *Woollahra Municipal Council v SJD DB2 Pty Limited [2020]* NSWLEC 115 found that adjacent buildings which exceeded the height controls should be considered when determining desired future character. Chief Justice Preston, (in the Appeal of that matter) concurred with this decision and confirmed that matters other than the development standards need to be considered including other developments that contravene the development standard.

When considering the character of development in the streetscape and immediate area, it comprises of low-density residential development and new contemporary developments comprising of two to three storey dwelling houses and a variety of dual occupancies. The character of the streetscape is changing, and modern infill development is creating a denser residential environment.

The proposed built form and design is consistent with the bulk and scale of the properties in the street. Given the steep topography of street where it rises from the south to the north, and given the cross fall many new developments exceed the height control at the front to achieve the architectural design and amenity outcomes.

New and renovated dwellings in the immediate locality are three storeys in form and expression when presented to the street. Refer to **Photo 1** below which is a three-storey attached dual occupancy development at No.53 Hastings Avenue and is similar in scale and form as the subject development. Although the architectural design and style may vary there is continuity and uniformity in the scale, height, siting and massing. The proposal has been designed and sited to respect the form of adjoining developments as such it is consistent with the desired future character of development in the streetscape.



Photo 1: similar three storey attached dual occupancy development at 53 Hastings Avenue.

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Clause 4.6 – Building Height

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

The height variation preserves the environmental amenity of neighbouring properties and public spaces. The area of the building which exceeds the control is essentially 30cm but only 9cm difference when compared to the approved height of the building. This minor area of variation forms part of the parapet which does not create any overlooking to immediately adjoining properties as there are no windows within the area of non-compliance (where the exceedance occurs).

The height exceedance does not impact on any views. Adjoining properties are orientated to face the park to the west and the area of variation does not block or affect view lines from properties at the rear which generally sit slightly lower than the subject site.

In respect to solar access, there is minimal additional overshadowing created by the variation that will not impact on habitable areas, private open space or public open space within the public domain. The additional height (300mm) will slightly extend the length of shadows but will maintain solar access compliance for immediately adjoining properties. **Figure 7 and 8** shows the additional shadowing at 9am and 3pm.

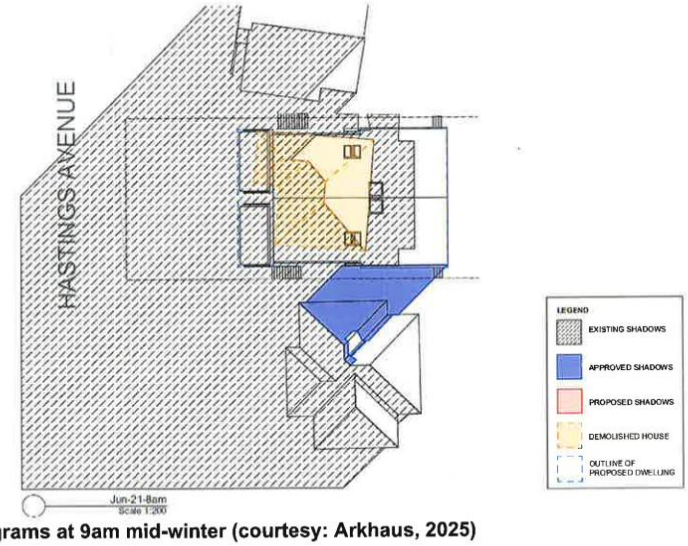


Figure 7: Shadow diagrams at 9am mid-winter (courtesy: Arkhaus, 2025)

The building height exceedance facilitates a building form that better reflects the residential character of the locality in the streetscape. All new dwellings and dual occupancies are three storeys in scale, and the existing building onsite reflects this scale and is consistent with the desired future character of development in the area. New developments reflect a three-storey scale with garage levels that are essentially below ground and two levels of habitable space above, a normal design and built form outcome and feature given the topography of the site and nature of the landform in the street.

The proposed development will achieve a better environmental, planning and design outcome for the site and is a development that will complement the character of new development and is considered to be a positive contribution to the streetscape.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

The development has been carefully designed to utilise and integrate basement areas which will not impact on the amenity of adjoining properties and will improve the functionality of the dwellings. The design of the development has been very well considered and carefully designed to create a high quality architectural and landscape design outcome. The modern and contemporary design is more in keeping with the desired future character of development in the streetscape and immediate low scale residential locality and neighbourhood.

There will be no adverse amenity or environmental impacts generated by the area of non-compliance regarding overlooking, overshadowing or view loss.

In *Initial Action*, the Court confirmed that "*environmental planning grounds*" are not clearly defined but are tied to the scope, purpose and intentions of the EP&A Act including the Objects in Section 13 of the Act. In this case the development is consistent with the objectives of the Act including promoting good design and amenity of the built environment, protecting the natural and cultural environment as the proposal will not impact on any conservation areas or items. The development is considered to be ecologically sustainable and BASIX compliant and will promote the social and economic welfare of the community by improving the quality, diversity and stock of housing in the area. The scheme satisfies the objectives of the EP&A Act.

4.0 Conclusion

For reasons mentioned herein, this Clause 4.6 report is considered to be well founded and has been prepared in support of the development proposal at 59 and 59A Hastings Avenue, Chifley and it is requested to be looked upon favourably by the consent authority.

It is considered that strict compliance with the development standard in respect to the height for the site in this particular case is unreasonable and unnecessary for a number of reasons which are detailed below.

The variation to the height control satisfies the objectives of the Building Height control (Clause 4.3) of the Randwick Local Environmental Plan 2012 (RLEP) and this statement has been well founded and should be supported on the grounds specified in the report.

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Appendix 3: DCP Compliance Table

3.1 Section C2

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2.4	**Site coverage**		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45% *Site area is measured on the overall site area (not proposed allotment areas)	Existing site coverage remains unchanged from the approved development. The unauthorised works do not alter the building footprint or overall site coverage	Suitable.
2.5	**Deep soil permeable surfaces**		
	Up to 300 sqm = 30% 301 to 450 sqm = 35% 451 to 600 sqm = 40% 601 sqm or above = 45% i) Deep soil minimum width 900mm i) Retain existing significant trees ii) 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.	While the current calculation is below the numerical control, there is no change proposed to the approved deep soil provision and no significant trees are impacted. The existing non-compliance is retained.	Suitable.
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	The unauthorised works do not alter the approved landscaping arrangement or canopy provision. No additional removal or change to planting is proposed.	Suitable.
2.7	**Private open space (POS)**		
	Dual Occupancies POS		
	451 to 600 sqm = 5m x 5m 601 or above sqm = 6m x 6m	Private open space areas are provided to the rear of each dwelling and exceed the minimum dimensional requirements.	Suitable.

DCP Clause	Controls	Proposal	Compliance
	iii) POS satisfy the following criteria: • Situated at ground level (expect for duplex) • No open space on podium or roofs • Adjacent to the living room • Orientated to maximise solar access • Located to the rear behind dwelling • Has minimal change in gradient • Includes landscaped areas, terraces, decks, paved surfaces and the like.	The configuration and usability of POS areas remain unchanged.	Suitable.
3	**Building envelope**		
3.1	**Floor space ratio LEP 2012 =**	Proposed = 0.93:1	The increase in GFA arises primarily from additional basement excavation and the conversion of previously excluded areas into habitable space. The additional floor area is largely contained below ground and within the approved building envelope. No (Refer to Clause 4.6)
3.2	**Building height**		
	Building height LEP 2012 =	Proposed = 9.8m	
	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	The exceedance of 0.47m (approximately 5%) results from the excavation of the basement level which establishes a new ground level. The overall built form and presentation remain consistent with the approved development (Refer to Clause 4.6)	Refer to 4.6.

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DCP Clause	Controls	Proposal	Compliance
	– Lot dimensions – Impacts on visual amenity, solar access, privacy and views of adjoining properties.	The unauthorised works do not introduce additional storeys or materially alter the overall building envelope or streetscape presentation. The proposal maintains a two-storey presentation.	
3.3	**Setbacks**		
3.3.1	**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.	The existing front setbacks range between approximately 6.4m and 7.0m.	Suitable.
3.3.2	**Side setbacks** 	Side setbacks vary between approximately 1.1m and 1.55m.	Suitable.
3.3.3	**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	Existing rear setbacks to the main building comply with the control. Deck elements extend to approximately 6.9m–7.5m, however these relate to secondary structures and do not result in significant impacts on privacy or solar access. The variation is minor and acceptable	Suitable.

DCP Clause	Controls	Proposal	Compliance
	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.		
4	**Building design**		
4.1	**General**		
	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 unauthorised works involve internal reconfiguration, minor rear extensions and changes to fenestration. These works do not materially alter the overall built form, scale or streetscape presentation of the development.	Suitable.
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 proposal does not introduce new external materials or finishes.	Suitable.
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:*	Additional excavation has occurred at the basement level to increase usable floor space. These works are not visible from the public domain and do not result in adverse impacts on adjoining properties.	Suitable.

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DCP Clause	Controls	Proposal	Compliance
	viii) adopt a split-level design ix) Minimise height and extent of any exposed under-croft areas.		
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.	The additional height and minor extensions do not result in significant changes to solar access.	Suitable.
	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. 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.	Adjoining properties retain acceptable levels of solar access consistent with the approved development.	Suitable.
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	The basement room is non-habitable and does not have natural ventilation like the garage from which entry to the room is gained. This is	Suitable.

DCP Clause	Controls	Proposal	Compliance
	• Fanlights above doorways • Highlight windows in internal partition walls i) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries ii) 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	acceptable as the room is non-habitable.	
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)	A number of window modifications are proposed including highlight and frosted glazing. These measures reduce opportunities for overlooking and maintain reasonable privacy outcomes for adjoining properties.	Suitable.
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.	Acoustic impacts unlikely.	Suitable.
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 unauthorised works do not alter the front façade, entry arrangements or visibility to the public domain.	Suitable.

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DCP Clause	Controls	Proposal	Compliance
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.	Given the limited extent of external changes and the containment of additional floor area within the basement, there are no material impacts on existing view corridors from neighbouring properties or the public domain.	Suitable.
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)	The proposal does not alter the approved access, driveway or parking configuration. Each dwelling retains basement car parking consistent with the original development consent.	Suitable.
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	The proposal does not include any changes to existing fencing. Existing fencing is considered consistent with the character of the locality and does not introduce inappropriate materials.	Suitable.
7.2	**Front Fencing**		
	i) 1200mm max. (solid portion not exceeding	No changes are	

DCP Clause	Controls	Proposal	Compliance
	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.	proposed to the existing front fencing as part of this development application.	Suitable.
7.3	**Side and rear fencing**		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	The proposal does not involve any modification to side or rear boundary fencing. Existing fencing remains appropriate in height, treatment and finish.	Suitable.
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	No new outbuildings are proposed as part of this application.	NA

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DCP Clause	Controls	Proposal	Compliance
	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.		
7.5	**Swimming pools and Spas**		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. i) Pool and coping level related to site topography (max 1m over lower side of site). ii) Where pool coping height is above natural ground level, pool to be located to avoid pool boundary fencing exceeding 2.2m from existing ground level from adjoining properties. iii) Where above natural ground and has potential to create privacy impacts, appropriate screening or planting along full length of pool to be provided. Planting to comply with legislation for non-climbable zones. iv) Incorporate screening or planting for privacy as above, unless need to retain view corridors. v) Position decking to minimise privacy impacts. vi) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	No swimming pool or spa is proposed or modified as part of this development application	NA
7.6	**Air conditioning equipment**		
	i) Minimise visibility from street.	Air conditioning units	

DCP Clause	Controls	Proposal	Compliance
	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.	have been relocated toward the rear of the site. The location maintains adequate separation to adjoining properties and reduces visibility from the street, consistent with the objectives of the control.	Suitable.
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).	The proposal does not include the installation or modification of communications dishes or antennae.	NA
7.8	**Clothes Drying Facilities**		
	i) Located behind the front alignment and not be prominently visible from the street	Clothes drying facilities are provided in accordance with the approved development and remain located behind the front building line.	Suitable.
7.9	**Utility Connections**		
	If power pole is within 15m of site (on same side of street), applicant must meet full cost for Ausgrid to relocate.	The proposal does not involve changes to utility connections or require relocation of existing infrastructure.	As existing.

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Responsible officer: Therese Cushway, Student Environmental Planning Officer

File Reference: DA/8/2026

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Draft Development Consent Conditions

Folder /DA No:	DA/8/2026
Property:	59 Hastings Avenue, Chifley NSW 2036
Proposal:	Regularisation of a series of unauthorised works to an existing attached dual occupancy including modifications to window sizes and locations, internal layout and design changes, extension of the building along basement, sides and rear and an increase in height and floor space (Variations to Maximum Building Height and Floor Space Ratio).
Recommendation:	Approval (Deferred Commencement)

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of deferred commencement consent using the power in section 4.16(3) of the EP&A Act, subject to the conditions set out in this notice.

Relevant matters

This consent does not operate and may not be acted on until the consent authority is satisfied of the following matter(s):

Deferred Commencement Consent – Notice

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of deferred commencement consent using the power in section 4.16(3) of the EP&A Act, subject to the conditions set out in this notice.

Schedule 1 – Deferred Commencement Conditions

Relevant matters
This consent does not operate and may not be acted on until the consent authority is satisfied of the following matter(s):

A1. Documentation Required – Building and Compliance

The following information must be submitted, to the satisfaction of Council's Manager Development Assessment or Coordinator Development Assessment and all matters pertaining to BCA/NCC compliance must be adequately addressed:

a) A Building Code of Australia (BCA) / National Construction Code (NCC) compliance report, prepared by a suitably qualified building professional or registered certifier, confirming that the dual occupancy complies with all applicable BCA/NCC provisions and relevant Australian Standards. The report must include copies of all referenced certificates, test reports and supporting documentation.

b) Implementation of all recommendations contained within the BCA/NCC report, including completion of any required rectification or upgrade works. A detailed statement prepared by a qualified building professional or registered certifier must then be submitted to Council confirming that all recommended works have been completed and that the building is compliant.

c) A structural adequacy report prepared by a qualified structural engineer, verifying that all structural elements within the dual occupancy comply with the relevant Australian Standards and confirming that all built and as-built components are structurally sound and suitable for safe occupation.

Evidence of compliance

Evidence required to satisfy the above conditions must be submitted to Council within six (6) months of the date of this consent.

Subject to compliance with the deferred commencement conditions, development consent is granted under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979 subject to the following conditions.

> *Note: Under section 76(4) of the EP&A Regulation, the consent authority will notify you in writing if the matters above have been satisfied and the date from which this consent operates.*
>
> *The conditions of development consent below apply from the date that this consent operates.*
>
> *Note: Section 76(3) of the EP&A Regulation enables a consent authority to specify the period within which the applicant must produce evidence to the consent authority sufficient enough to enable it to be satisfied as to the relevant matter(s) that it requires before a deferred commencement consent can operate. Where a period is specified under section 76(3), a deferred commencement consent will lapse if the applicant has not produced sufficient evidence for the consent authority to be satisfied of the relevant matters on the expiration of the specified period.*
>
> *Where the applicant produces evidence of the relevant matters in accordance with section 76(4) of the EP&A Regulation, the consent authority must notify the applicant whether or not it is satisfied as to the relevant matter(s). If the consent authority has not notified the applicant within 28 days after receiving the applicant's evidence, the consent authority is taken to have notified the applicant that it is not satisfied about the relevant matter(s) on the date on which that period expires, for the purposes of section 8.7 of the EP&A Act (see sections 76(4), (5) and (6) of the EP&A Regulation).*

Evidence of the above relevant matter(s) must be produced to the consent authority, within **six (6) months** of the date of the determination, otherwise the consent will lapse.

Reasons for approval

The proposal complies with the relevant assessment criteria will not result in any adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

The application is therefore recommended for approval subject to the attached conditions of consent.

Right of appeal / request a review of the determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

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GENERAL CONDITIONS

Condition

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

Plan	*Drawn by*	*Dated*	*Received by Council*
DA.02 Site Plan Revision C	Arkhaus	8 May 2026	11 May 2026
DA.04 Basement Plan Revision C	Arkhaus	8 May 2026	11 May 2026
DA.05 Ground Floor Plan Revision C	Arkhaus	8 May 2026	11 May 2026
DA.06 First Floor Plan Revision C	Arkhaus	8 May 2026	11 May 2026
DA.07 Roof Plan Revision C	Arkhaus	8 May 2026	11 May 2026
DA.08 West Elevation Revision C	Arkhaus	8 May 2026	11 May 2026
DA.09 East Elevation Revision C	Arkhaus	8 May 2026	11 May 2026
DA.10 North Elevation Revision C	Arkhaus	8 May 2026	11 May 2026
DA.11 South Elevation Revision C	Arkhaus	8 May 2026	11 May 2026
DA.12 Section A-A Revision C	Arkhaus	8 May 2026	11 May 2026
DA.13 Section B-B Revision C	Arkhaus	8 May 2026	11 May 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.

BEFORE USE

Condition

2. **Consent Requirements**
The requirements and amendments detailed in the 'General Conditions' must be complied with.

	Condition
	Condition Reason: To ensure any requirements are complied with.

OCCUPATION AND ONGOING USE

	Condition
3.	**Use of Premises** The premises must only be used as an attached dual occupancy and must not be used for multi-occupancy purposes. In addition, the entire basement floor level must not be used for habitable purposes. Condition Reason: To ensure the development is used for its intended purpose.
4.	**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*. Condition Reason: To protect the amenity of the surrounding area and residents.

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