

# Randwick Local Planning Panel (Electronic) Meeting

Monday 23 May 2022  
DEFERRED ITEMS



**RANDWICK LOCAL PLANNING PANEL  
(ELECTRONIC CONSIDERATION OF DEFERRED MATTERS)**

The reports contained in this business paper was circulated to panel members to be dealt with electronically, pursuant of cl 26 of Schedule 2 of the *Environmental Planning and Assessment Act 1979*.

**Declarations of Pecuniary and Non-Pecuniary Interests**

**Development Application Report**

D30/22      16 Johnston Parade, Maroubra (DA/561/2021) - (DEFERRED ITEM) ..... 1

Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D30/22

**Subject:** 16 Johnston Parade, Maroubra (DA/561/2021) - (DEFERRED ITEM)

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


### Executive Summary

**Proposal:** Alterations and additions to an existing dwelling house  
**Ward:** Central Ward  
**Applicant:** Pinnacle Plus  
**Owner:** Mr R H Miller and Ms M Miller  
**Cost of works:** \$481,864  
**Reason for referral:** Conflict of Interest

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Floor Space Ratio (FSR) development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/561/2021 for alterations and additions to an existing dwelling house (Variation to FSR) at No. 16 Johnston Parade Maroubra, subject to the development consent conditions attached to the assessment report..

### Attachment/s:

1.  Randwick Local Planning Panel (Electronic) - 9 December 2021 - REPORT - 16 Johnston Parade Maroubra (DA/561/2021)
2.  RLPP Dev Consent Conditions (dwellings dual occ) - 9 December 2021 - DA/561/2021 - 16 Johnston Parade, MAROUBRA NSW 2035 - Development - Randwick City Council
3.  RLPP Dev Consent Conditions (dwellings dual occ) - DA 561 2021 - 16 Johnston Parade MAROUBRA NSW 2035 Randwick City Council(2)

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## 1. Introduction

The subject Development Application (DA) was considered at the Randwick Local Planning Panel (RLPP) electronic meeting on 9 December 2021. At the meeting it was resolved:

*The RLPP defer consideration of the matter pending clarification by Council Officers of the approved existing development and the implications of the clause 4.6 variation. Further advice is to be provided to the Panel by the end of January 2022.*

*The Panel has visited the site or is familiar with the site and reviewed the assessment report prepared by Council officers.*

*The Panel notes that the layout shown on the development application plans differs from Councils records (BA/794/1972) and appears capable of occupation as two (2) separate dwellings.*

*If the applicant decides to proceed with the development as an attached dual occupancy, the current application must be withdrawn and a new application is to be lodged.*

The additional information provided by the applicant, has been considered and assessed below in Key Issues, and is considered acceptable subject to additional conditions including the deletion of the kitchen at first floor level and restricting the use of the premises as a single dwelling only at all times.

## 2. 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 original assessment report attached and the 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 the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development as conditioned is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Not applicable.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

### 2.1. Discussion of key issues

The findings of the Panel, specifically addressed the following concerns:

*The Panel notes that the layout shown on the development application plans differs from Councils records (BA/794/1972) and appears capable of occupation as two (2) separate dwellings.*

The applicant has provided the following justification, which has been paraphrased and summarised below:

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Email 18 January 2022: Council's concerns are that the existing property is capable to be used as a dual occupancy. The applicant does not have any intentions or propose the development as a dual occupancy.

We seek approval only for the addition of a master suite within the roof space and new front fence.

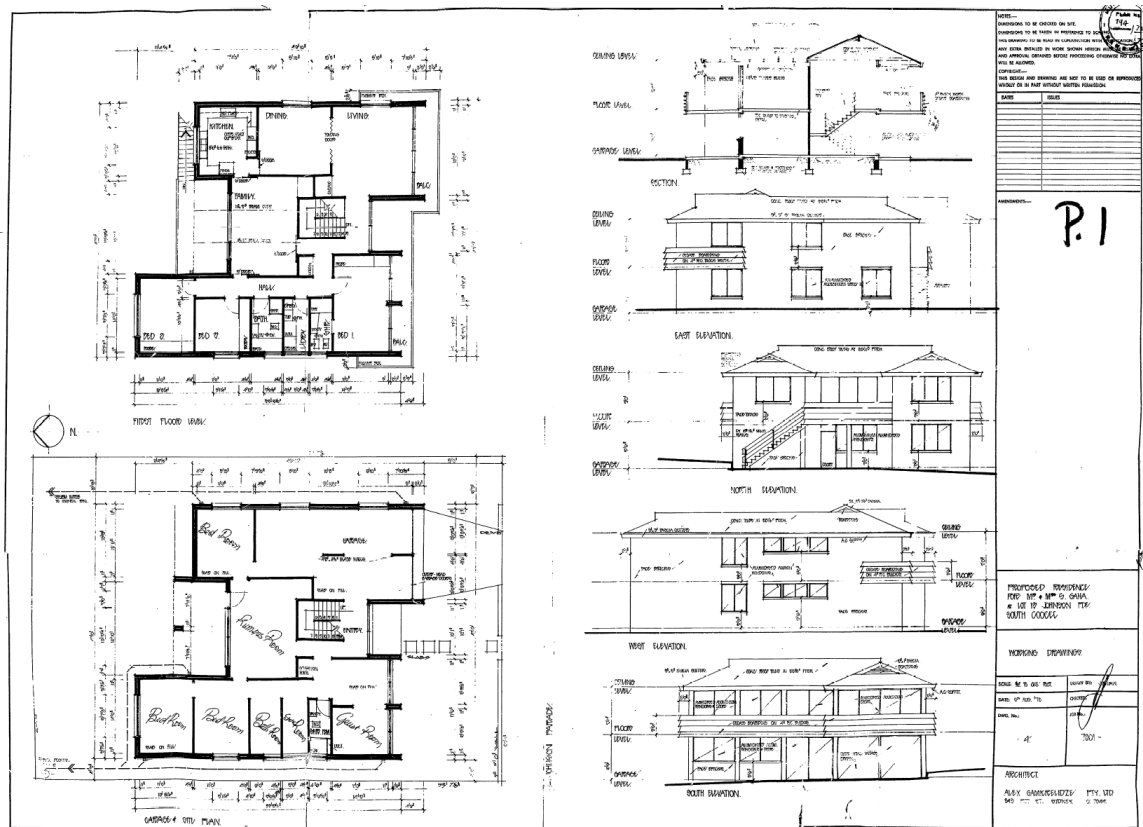
*'I am writing (email dated 15.02.22 from applicant): The Development Application was recommended for Approval by the consultant planner and was to be determined by the Randwick Local Planning Panel on 9 December 2021. Council's concerns are that the existing property is capable to be used as a dual occupancy. During the Development Application assessment information was provided that the owners did not intend to use the property as an attached dual occupancy. A letter from the owner's was submitted as part of the request for information. The applicant does not have any intentions or propose the development as a dual occupancy. As such, and as per the proposal which was assessed and recommended for Approval by the consultant planner. Correspondence from Council was further advised to be provided to the Panel by the end of January 2022'.*

Council further advised the applicant on 8 March 2022 that the Panel decision confirmed that the layout shown on the development application plan differed from Council's records (BA/794/1972) and appeared capable of occupation as two separate dwellings. The Panel was aware of the letter dated 25 October 2021 and whilst the applicant's email dated 15 Feb 2022 indicated there is no intention to use the property as an attached dual occupancy, the concerns raised by the Panel remains unaddressed. The fact remained that the property had been converted without Council approval, which would allow the building to be used as an attached dual occupancy. Notwithstanding, the applicant has provided the following additional justification, paraphrased and summarised below:

*'We are unable to advise when the layout had been modified as this occurred prior to the client purchasing this property. Since purchasing the property, the client has not carried out any unauthorised works.*

*However, in order to rectify this issue, we are willing to modify the existing layout by removing the kitchen from the first floor. It is requested a condition be imposed within the consent requiring the kitchen to be removed, in order to resolve this issue as part of the current application'.*



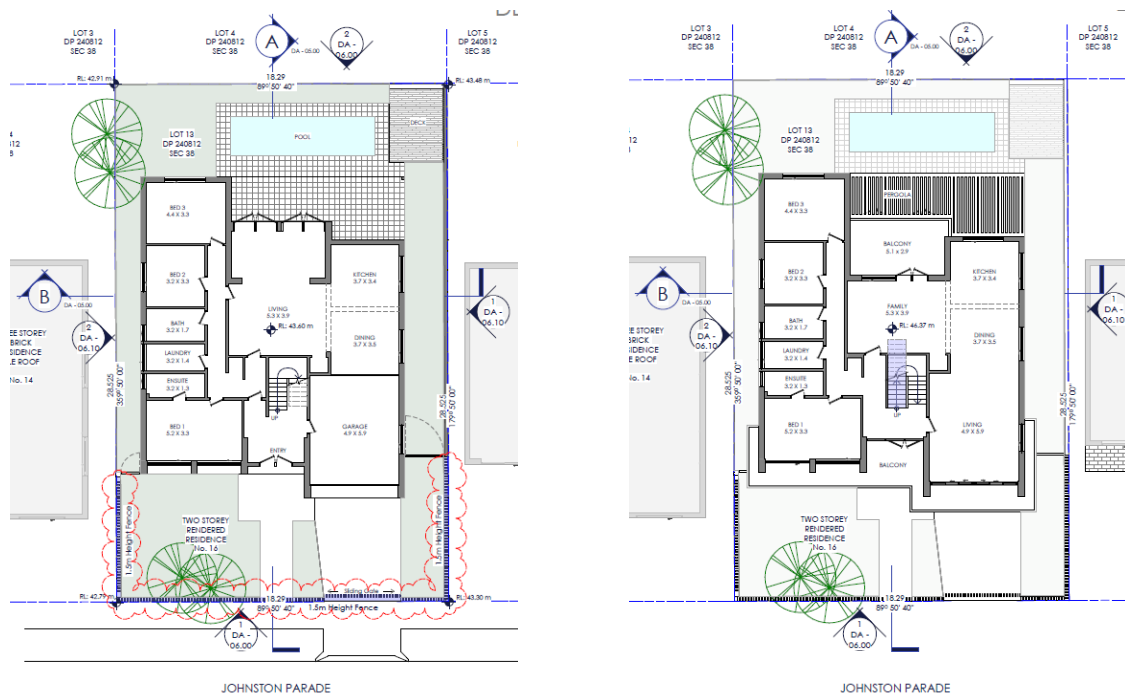


**Figure 1: Approved plans under BA/794/1972 (Approved on 1 Jan 1972)**



**Figure 2.** Floor plan layout at time of purchase - 16 Johnston Parade, Maroubra

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**Figure 3.** Floor plan submitted with original application - 16 Johnston Parade, Maroubra

### 3. Conclusion

On the basis of the above assessment, the application for alterations and additions to an existing dwelling house 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 in that 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.

**Responsible officer:** Tony Ristevski, Coordinator Fast Track

**File Reference:** DA/561/2021



Randwick Local Planning Panel

9 December 2021

## Development Application Report No. D78/21

**Subject:** 16 Johnston Parade Maroubra (DA/561/2021)

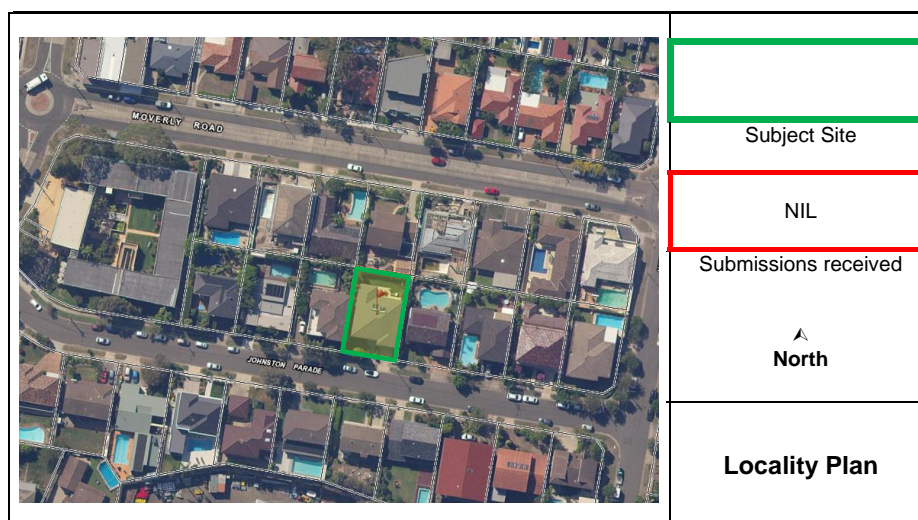
<b>nnProposal:</b>	Alterations and additions to an existing dwelling house (Variation to FSR).
<b>Ward:</b>	Central Ward
<b>Applicant:</b>	Pinnacle Plus
<b>Owner:</b>	Mr R H Miller & Mr M Miller
<b>Cost of works:</b>	\$481864
<b>Reason for referral:</b>	Conflict of Interest

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Floor Space Ratio (FSR) development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/561/2021 for alterations and additions to an existing dwelling house (Variation to FSR) at No. 16 Johnston Parade Maroubra, subject to the development consent conditions attached to the assessment report.

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### 1. Executive summary

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

- The applicant's designer is associated with a Councillor/ a member of council planning staff.

The proposal seeks development consent for alterations and additions to an existing dwelling house (Variation to FSR).

The key issues associated with the proposal relate to exceedance of the FSR control and streetscape presentation associated with the roof form.

The proposal is recommended for approval subject to non-standard conditions that require a reduction in the height of the front fence, and better detailing of plans showing the operable skylight and materials.

### 2. Site Description and Locality

The subject site is known as 16 Johnston Parade, Maroubra, and is legally described as Lot 13 Section 38 in Deposited Plan 240812.

The site is 521.70m<sup>2</sup>, is regular in shape and has a 18.29m frontage to Johnston Parade to the south. The side boundaries are 28.525m long. The site contains a two storey rendered brick dwelling with a tile roof.

The site is relatively flat, sloping from RL43.13 in parts of the south-west of the front garden and along the western boundary with the highest part of the site at RL43.61 on the eastern boundary. The majority of the site is between RL43.3 to RL43.5.



### 3. Relevant history

A swimming pool was constructed in the rear yard pursuant to complying development certificate (CDC) 180999 being referenced as Randwick City Council CDC – 303/2018. The CDC plans also included the demolition of existing external steps to the first floor rear balcony and extending the paved area to the pool. Those works have been carried out. It is unclear whether the outdoor kitchenette in the CDC plans has been constructed.

Other recent additions to the property which do not appear to have been conducted by CDC are:

- The construction of a timber deck in the north east corner of the rear yard next to the swimming pool which abuts the eastern boundary and is very close to the northern boundary. It appears to be at the same level as the pool coping; and
- The construction between January and April 2019 of a roofed structure covering the rear paved area, which includes skylights. It is shown on the plans as a pergola. This covers an area of 9.5m length across the rear of the dwelling and up to 3.5m depth beyond the rear wall of the dwelling. The covered area is approximately 27.75m<sup>2</sup>.

SEPP (Exempt and Complying Development Codes) 2009 allows for exempt development of a patio or roofed structure of up to 25m<sup>2</sup> as exempt development under clause 2.12, and it appears that the covered structure (called a pergola) exceeds this. Exempt development under Subdivision 6 of the exempt code must also be 900mm from the boundary, and the deck appears to have setbacks of less than 900mm to the north and east boundaries. Council's compliance officers may wish to consider whether these works have been conducted legally.

On 13 October 2021, the assessor of this application provided a request for further information, advising as follows:

*We have reviewed the plans and documentation and advise that the proposal is not in a form which is currently able to be supported. The following changes would need to be made to enable any prospect of a recommendation of support for the application:*

1. *The proposed roof form has a very poor streetscape relationship and is not consistent with the desired future character of the neighbourhood or the existing streetscape. It contributes to excessive bulk from the street and from the dwellings on Moverly Road. The roof form should reflect the hipped or gabled roof form which dominates the surrounding development.*

2. *The proposal lacks articulation which could be provided with use of a pitched roof form*
3. *The proposal exceeds the wall height control of 7m in section 3 of part C1 of the Randwick DCP, by 1.8 metres. Any wall height exceedance from amendments to the design to a pitched roof, should be substantially reduced.*
4. *At 63.8m<sup>2</sup>, the bedroom addition is excessively large, particularly given the exceedance of the FSR control. The bedroom needs to be substantially reduced in size.*
5. *Care should be taken in ensuring that the BCA minimum ceiling heights for pitched roof forms are achieved.*
6. *The walk in robe and ensuite area do not take advantage of possible natural ventilation and light possibilities, nor are any ceiling fans proposed, in a room on the second level in a dwelling which does not have air conditioning.*
7. *The fully glazed north elevation with no eaves should be reconsidered from a sustainability and privacy viewpoint (including privacy for the occupants of the bedroom itself)*
8. *The clause 4.6 exception request is not supportable. It has not properly considered the proposal in various areas including:*
  - a. *the desired future character of the neighbourhood, in particular relating to the number of storeys, articulation and the roof form*
  - b. *there is insufficient analysis of the streetscape to demonstrate that the proposal is supportable on environmental planning grounds*
  - c. *privacy impacts which may be felt by 75 and possibly 77 Moverly Road are not considered. There are no photographs looking from the existing balcony or from the proposed bedroom standing level towards these dwellings which would provide assistance in assessing privacy impacts.*
  - d. *whether there are any district views which may be impacted by the proposal when viewed from the dwellings on the southern side of Johnston Parade. Again, no photographs from the first floor windows of these houses have been provided to demonstrate whether or not there are any potential view losses*

*Overall, the site currently does not meet the following DCP controls: site coverage, landscaping and permeable deep soil, ceiling heights, front setback, rear setback, and driveway width. The proposed exceedance of the FSR control by the construction of a 63.8m<sup>2</sup> bedroom appears as an overdevelopment of the site.*

*The site layout (including as set out in the survey in which each level is described as having bedrooms 1, 2 and 3) lends itself to being used as a dual occupancy. Dual occupancies do not have the benefit of the additional 0.15:1 FSR to 0.65:1 under the LEP. Can you clarify how the dwelling is occupied?*

*Could you please provide photographs of the rear awning and the pool and deck area?*

On 28 October 2021 the Applicant provided amended plans, photographs, a letter from the occupiers of the site and a response to the request for further information.

On 9 November 2021 the assessor of this application provided advice as below suggesting a withdrawal of the application as follows:

*Thank you for the revised plans, photographs, explanation, and letter from the occupants of the dwelling. I am also in receipt of the amended clause 4.6 for the FSR exceedance and amended SEE.*

*Following a detailed review of the plans and documents provided on 28 October 2021, significant concerns are raised with the proposal. The amended documents have raised additional concerns and some of the earlier concerns have not been appropriately addressed. Therefore the application is not in a position to be recommended for approval. The principle matters of concern relate to:*

- *The building height of the proposal is taken from 300mm below the finished floor slab. This means that the height exceeds the building height control and a clause 4.6 request is required.*

- The bedroom does not appear to be compliant with the BCA minimum ceiling height requirements
- The amended clause 4.6 request relating to FSR contains errors which prevent it being able to be relied upon to justify the exceedance requested
- The form of the roofline includes unnecessary bulk and the asymmetry of the proposal does not enhance the streetscape. The addition has a poor interface at the rear with the existing development
- There are errors in the submitted drawings and amended Statement of Environmental Effects and additional measurements are required on the plans to enable further assessment
- It is unclear how the proposed planter box would be maintained
- The proposed fence does not comply with the DCP controls regarding height and composition, there is no resolution for fencing on the return at the side boundaries, and further details as to the gate operation are required
- It is not demonstrated that the proposal could be constructed to satisfactorily deal with services and ventilation

You are therefore invited to withdraw the application and a partial refund of application fees may apply. Please complete and submit the withdrawal available at the following link [http://www.randwick.nsw.gov.au/\\_data/assets/pdf\\_file/0009/260469/Application-to-withdraw-an-application.pdf](http://www.randwick.nsw.gov.au/_data/assets/pdf_file/0009/260469/Application-to-withdraw-an-application.pdf)

If the application is not withdrawn it will be determined on the basis of the current plans and the assessment report will recommend refusal. Please advise within the next couple of days.

On 19 November 2021 the applicant lodged further amended plans on the planning portal, an amended clause 4.6 request in relation to FSR, an amended Statement of Environmental Effects and a response to the email of 9 November 2021.

#### 4. Proposal

The proposal seeks development consent for an additional storey to contain the 'parents' quarters', which include a bedroom, en suite bathroom and walk-in wardrobe. The original design was a box style design of 63.8m<sup>2</sup> with a roof level at the same height as the existing roof ridge. The amended design is for a smaller upper level addition of 42.8m<sup>2</sup>. This is to be within a roof form which is largely the same as the currently existing hipped roof form when viewed from the street, although there is a minor increase in height to bring the roof to an apex with a roof ridge at RL52.8 – an increase of 0.92 metres above the existing roof ridge of RL51.88. There will be a change in the roof form at the rear with the rear addition appearing in a gable style centrally located over the existing development.

The proposal will result in an exceedance of the FSR control under the Randwick LEP 2012 and a clause 4.6 exception request has been submitted to address the plans provided on 19 November 2021. The proposal does not breach the height control when measured from 300mm below the ground floor slab.

#### 5. Notification

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

##### 5.1. Renotification

The amendments were of a reduced scale to that originally notified and renotification was not deemed necessary.

#### 6. Relevant Environment Planning Instruments

##### 6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

## 6.2. Randwick Local Environmental Plan 2012 (LEP)

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

The 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
Cl 4.4: Floor space ratio (max)	0.65:1	0.69:1	No
Cl 4.3: Building height (max)	9.5m	9.5m	Yes
Cl 4.1: Lot Size (min)	400m <sup>2</sup>	Existing – No Change	N/A

### 6.2.1. Clause 4.6 - Exceptions to development standards

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

## 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.65:1	0.69:1	22.3 m <sup>2</sup>	6.6%

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

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*



In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ summarised the matters in Clause 4.6 (4) that must be addressed before consent can be granted to a development that contravenes a development standard.

1. *The applicant's written request has adequately 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's written request has adequately 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 adequately 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.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

4. *The concurrence of the Secretary has been obtained.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
- (b) the public benefit of maintaining the development standard

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

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(4) have been satisfied for each contravention of a development standard.

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

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

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

The applicant's written request seeks to justify the contravention of the 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 amended form will not visually add to the bulk and scale of the existing dwelling as it is contained within the existing building footprint, does not result in a non-compliance with the maximum building height control and does not impact site coverage, landscaping and private open spaces. The size and scale will be commensurate with the dwelling house on the western side and within the wider locality.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the amended design contains has been articulated to ensure it does not contribute to an unacceptable level of bulk and scale and is setback further in from the external building walls. The amendments serve to minimise demolition.

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 amended design of the upper level addition is centrally located to the rear and will not generate any visual bulk or scale when viewed from the streetscape or neighbouring properties. Furthermore the additions are contained within the existing building footprint and do not exceed the maximum building height. The request states that streetscape impacts are minimised as the proposal retains the existing building façade and roof form.

The request notes that the addition does not propose any side windows with privacy from the windows maintained by appropriate sill heights. There will be no additional overshadowing and no impact on views as it is contained centrally and within the building height limit

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 adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?**

The applicant seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the FSR development standard and submits that the proposed addition:

- Is centrally located, at the rear and contained within the roof ensuring bulk and scale are away from neighbouring properties and not highly visible from the streetscape
- Will require minimal demolition and not result in a loss in landscape area, private open space or any earthworks.
- Has been designed for the desired future character of the locality as it complements the existing development within the streetscape and surrounding area.
- Retains the existing high level of internal amenity for the residents and neighbours with appropriate ventilation and internal amenity
- Provides setbacks which are greater than required in the DCP with no negative impacts
- Creates no additional overshadowing
- Does not impact view sharing
- Will facilitate ecological sustainable development given that there are no negative environmental and social impacts
- Complies with BASIX
- Provides a built form and massing that positively influences the future amenity of the dwelling with an architectural form and language compatible with the established and emerging development and housing typology
- No impacts on threatened species or ecological communities
- Removal of excess FSR would reduce the internal amenity of the dwelling and the extent of bedroom accommodation

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

**3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?**

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and R2 low density is provided below.

**Assessment against objectives of floor space ratio standard**

For the reasons outlined in the applicant's original written request, in relation to a proposed higher FSR the amended development is now consistent with the objectives of the FSR standard, as indicated here.

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

Assessing officer's comment: The desired future character of the locality is established in the area as a mix of single, double and three-storey dwellings, largely of modern vernacular form in a low density residential environment.

The size and scale of the proposed development is compatible with the 'desired future character of the locality' as it will not protrude obtrusively from the existing built form and will largely retain the existing streetscape character.

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

Assessing officer's comment: The proposed development is consistent with the current form of the existing dwelling.

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,*

Assessing officer's comment: The proposed development is compatible with the scale and character of the locality. The dwelling is not a heritage item nor located within a heritage conservation area. This head of consideration is therefore not 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 assessment that must be made is whether or not the development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

- Visual bulk: The development now presents as an integral part of the existing building and is not otherwise excessive in mass or form.
- Loss of privacy: A detailed assessment of privacy impacts is provided in Appendix 2 (Item 5.3 – Visual Privacy). The windows are at a similar setback to those on the floor below. No side windows are proposed, therefore the proposed development will not result in any unreasonable adverse privacy impacts.
- Overshadowing: A detailed assessment of the overshadowing impacts is provided in Appendix 2 (Item 5.1 – Solar access and overshadowing). This assessment shows that no adverse overshadowing of the neighbouring properties or the living areas of the dwelling will result by way of this development.
- Views: A detailed view loss assessment is provided in Appendix 2 (Item 5.6 – View Sharing). This assessment shows that there will likely be no loss of views by way of this development.

Based on the above assessment, it is considered that development will not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The development is consistent with the objectives of the floor space ratio standard.

#### **Assessment against objectives of the R2 zone**

The objectives of the R2 zone are:

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

Assessing officer's comment: The proposed development will provide for the housing needs of the community within this environment and it is not inconsistent with the existing streetscape and built form of the area. Further it will not result in adverse impacts on the amenity of the neighbours, and will facilitate inter-generational accommodation on site.

The development is consistent with the objectives of the floor space ratio standard and the R2 Low Density Residential zone. Therefore the development will be in the public interest.

#### **4. Has the concurrence of the Secretary been obtained?**

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

*Does contravention of the development standard raise any matter of significance for state or regional environmental planning?*

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

*Is there public benefit from maintaining the development standard?*

Variation of the maximum floor space ratio standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

#### **Conclusion**

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

#### **8. Development control plans and policies**

##### **8.1. Randwick Comprehensive DCP 2013**

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

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

## 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 2 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	N/A No submissions have been received.
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

#### Streetscape presentation

The original plans had a very poor presentation to the street with a box like addition providing a very large addition to the building alongside the existing hipped roof form. It provided for a large exceedance of the RDCP 2013 wall height control and did not present as being within the roof



form. The second iteration of plans improved this however provided for a slightly asymmetrical roof form which created a second roof level above the existing roof level. This likewise presented poorly to the street. The current proposal has consolidated the addition under a very similar roof form to the existing, whilst still retaining compliance with the building height control. The addition presents well to the street and is consistent with the existing streetscape. See comments below about the fence and its streetscape presentation.

#### **Size and form of the addition**

The original design included a bedroom which was of 63.8m<sup>2</sup>, considered to be excessive given the exceedance of the FSR control. The reduction to a room of 42.7m<sup>2</sup> provides a generous but not overwhelmingly large retreat which is largely contained within the existing roof form. The applicant has demonstrated compliance with the BCA building height requirements for the room. Additional information has been provided to indicate that privacy and view impacts are not a concern. The operable skylight above the ensuite is not shown in all of the plans and this should be conditioned. The amended clause 4.6 request has now adequately satisfied the requirements.

The applicant has demonstrated that the BCA requirement for at least two-thirds of the room under the roof to be at least 2.2metres has been achieved. Although it does not have a 2.7m height, the roof does reach to 3.4 metres at the apex which assists in providing internal amenity.

#### **Fence**

The fence was not included in the original proposal and was added in the second set of drawings which did not comply with the DCP. The current set has reduced the height of the fence as stated to 1.5m, however due to stepping at some places this is more like 1.7m. The streetscape is characterised by very low fencing and a 1.5m fence will not be consistent with the existing streetscape. It is recommended that this be lowered to generally a 1.2m fence with the proposed side fencing to taper down to this height. The plans do not include materials for the fence although it appears to be metal bars above a rendered base.

### **10. Conclusion**

That the application to carry out alterations and additions to existing dwelling to incorporate a third level bedroom, en-suite bathroom and walk-in wardrobe, associated works, and new front fence be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

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

#### **1. Introduction**

This Clause 4.6 variation request has been prepared to accompany the development application for alterations and additions to an existing dwelling house at 16 Johnston Parade, Maroubra.

Clause 4.6 of the Randwick *Local Environmental Plan 2012 (RLEP2012)* allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

*Clause 4.6 of the Randwick LEP states the following:*

**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 for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (a) *the consent authority is satisfied that—*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

The above objectives and requirements of Clause 4.6 of the RLEP 2012 are discussed throughout this report.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Wehbe v Pittwater Council* [2007] NSWLEC 827 which established 5 ways in which a departure from a development standard can be justified and shown that compliance with the development standard is unreasonable or unnecessary. This was then reiterated by Chief Justice Preston in the most recent case law court judgment from *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The five methods outlined in *Wehbe* include:

- Method 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard
- Method 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
- Method 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
- Method 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.
- Method 5: The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it

applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

For the subject variation and circumstances of this application, the first method will assist in establishing that compliance with the development standard is unreasonable or unnecessary.

## 2. Proposed Variation

The RLEP 2012 FSR map stipulates a maximum FSR of 0.5:1 for the subject site. However, for sites located within the R2 Low Density Residential Zone and with an area of between 450m<sup>2</sup> to 600m, Clause 4.4(2A) of the RLEP 2012 allows a maximum FSR of 0.65:1.

The proposal seeks a variation to the development standard contained within Clause 4.4(2A) of the RLEP 2012. The proposed alterations and additions result in an FSR of 0.69:1, which represents a variation of 6.57%.

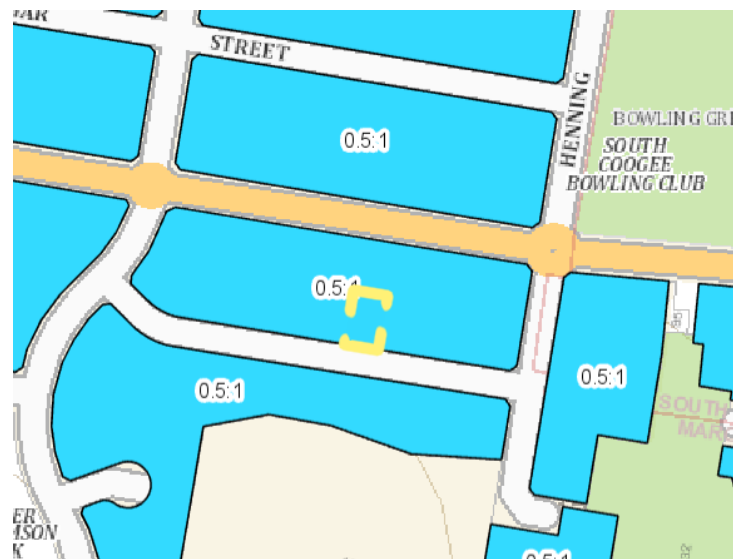


Figure 1: Floor space ratio map sourced from the *Department of Planning, Industry and Environment – Planning Portal – August 2021*

This Clause 4.6 Variation Statement to a Development Standard should be read in conjunction with the Statement of Environment Effects and Architectural Plans prepared by Pinnacle Plus.

**3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

As mentioned above in this report, Method 1 of the 5 tests outlined in Wehbe will be used to show that compliance with the development standard is unreasonable or unnecessary.

**Method 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The objectives of Clause 4.4 Floor Space Ratio of the RLEP 2012 are as following:

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

The purpose of this objective is to ensure that any future development is designed in a manner whereby any resulting floor space ratio will appropriately respond to both the existing and future context in a controlled manner.

The additional FSR will not visually add to the bulk and scale of the existing dwelling as it is contained within the existing building footprint. The proposed increase in FSR does not result in a non-compliance with the maximum height control and does not exceed the existing site coverage, whilst maintaining the existing landscaping and private open spaces afforded to the site.

The locality within which the site is located is characterised by a variety of dwelling forms, which include dwellings of one, two and three storeys in height. As per the definitions of the LEP, the proposal results in a three storey dwelling, however, generates the impacts of a two storey dwelling due to the sensitive design. Therefore, the size and scale of the end development on this occasion will be commensurate with the dwelling house on the western side adjoining property and developments within the wider locality.

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

The proposed second storey has been well articulated to ensure it does not contribute to an unacceptable level of bulk and scale. The second storey is setback further in from the external building walls of the existing dwelling and complies with the maximum building height standard. The proposal also utilises interesting colours and materials to minimise visual impacts.

The proposed siting of the additions is considered to be most sustainable as it requires minimal demolition and does not result in a loss in landscape area, private open space, or any earthworks. The proposed siting also allows the works to be constructed within the existing building footprint and therefore not resulting in an increase to the site coverage or reduction to the existing setbacks.

A BASIX Certificate accompanies the application, and demonstrates compliance with the BASIX and environmental requirements. The proposal provides adequate ventilation by way of operable windows and skylight.

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

This objective is not relevant to the proposed development as there are no heritage items or conservations areas in close proximity of the site which would be impacted by the proposal.

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

Visual bulk: Due to the design of the proposed third storey, being centrally located to the rear of the dwelling, the proposal will not generate any visual bulk or scale when viewed from the streetscape or neighbouring properties. The proposed additions are contained within the existing building footprint and do not exceed the maximum 9.5m building height. There will be no increase

in site coverage or a reduction to the landscaping and private open space areas, and setbacks which are significantly greater than required have been provided.

Streetscape impacts are minimised as the proposal retains the existing building façade and roof form (the proposed reconstruction of the existing roof will not result in any changes to the roof form when viewed from the street). The proposed second storey appears as an attic addition, rather than a third level, therefore retaining the two storey appearance of the dwelling. The proposed third level will not be visible from the street as it is integrated within the roof.

The proposed additions are to be constructed of materials and finishes which complement the existing dwelling.

Loss of privacy: The proposed works will not impact on the visual privacy currently afforded to the adjoining properties. The second storey does not propose any windows along the side elevations, with windows being limited towards the rear. Privacy from rear windows is maintained by appropriate sills heights.

Overshadowing: As demonstrated within the submitted shadow diagrams, the proposed additions do not result in any adverse overshadowing on the adjoining properties, with any additional overshadowing occurring on the roof of the subject dwelling. The generous setbacks, compliance with the building height, and modest size of the additional storey ensures there will be no additional overshadowing impacts.

Views: No impact as the second storey is contained centrally of the existing dwelling and does not exceed the maximum building height permitted, whilst maintain the existing site coverage and building setbacks.

Strict compliance with the FSR control would result in a development that does not provide for reasonable residential amenities for the occupants of the dwelling, and the purpose behind the FSR standard has been achieved notwithstanding the exceedance. The non-compliant elements of the development assist in the provision of additional habitable space for the growing family, whilst retaining the appropriately sized living and sleeping areas of the dwelling, without undermining the objectives behind the standard.

The proposal complies with all other controls stipulated within the LEP and DCP and has effectively demonstrated that the FSR noncompliance does not contribute to inappropriate building envelope. The proposal will also result in a building form that is consistent with the desired future character of the area.

Therefore, the FSR can be supported on the site and that strict compliance with the development standard is unreasonable or unnecessary.

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

**Assessment:** It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, and these include:

- To minimise amenity and streetscape impacts, the additions have been located to the rear and centrally of the dwelling, and are contained within the roof. This ensures that the bulk and scale of the additions is away from the neighbouring properties and not highly visible from the streetscape.
- Due to the dwelling on the site being established, the proposed siting of the additions is considered to be most sustainable as it requires minimal demolition and does not result in a loss in landscape area, private open space, or any earthworks. The proposed siting also allows the works to be constructed within the existing building footprint and therefore not resulting in an increase to the site coverage or reduction to the existing setbacks. Due to the reconstruction of the existing roof, there is an increase to the building height however this remains compliant with the maximum 9.5m permitted for the site.

- The proposal has been designed for the desired future character of the locality as it complements the existing development within the streetscape and surrounding area. The architectural design of the additions is consistent with both the existing dwelling and development within the locality.
- The proposed additions retain the existing high level of internal amenity for the residents as well as the adjoining residents. The new addition is appropriately ventilated and well lit to ensure the high level of internal amenity is continued.
- In order to minimise amenity impacts on the adjoining neighbours, the proposal provides setbacks which are significantly greater than what are required by the DCP. It has been demonstrated that the FSR variation does not contribute to any negative impacts on the surroundings and ensures that the proposal provides a good level of building separation, access, landscaping, private open space, visual/acoustic privacy, plus natural lighting and ventilation for both the existing dwelling and adjoining properties.
- Due to the design and development of the proposed additions, there will be no adverse overshadowing on the subject site or adjoining properties. The shadow diagrams demonstrate that the subject site and adjoining properties will continue to receive more than 4 hours of solar access between 8am and 4pm on 21 June, thereby complying with the DCP provisions for solar access to neighbouring properties. The minimal overshadowing is due to majority of the bulk being contained within the existing building footprint.
- View sharing for adjoining properties is not unreasonably impacted by the proposal, given the dwelling achieves height compliance and there is no increase to the existing site coverage or a reduction to the setbacks.
- The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area. The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity which consistent with that envisaged by Council and in keeping with the desired future character of the locality.
- The application is accompanied by a BASIX Certificate which confirms to the requirements of SEPP Building Sustainability Index (BASIX) 2004 in terms of potable water consumption, energy efficiency, solar access, and thermal comfort.
- The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with a height and land use intensity compatible with both the established and emerging development and housing typology.
- Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
- Removal of the excess FSR from these sites would only serve to reduce the internal amenity of the dwellings and the extent of bedroom accommodation. There are no internal amenity grounds that would determine that the additional FSR should not be granted. The combination of the internal and external amenity factors demonstrates that there are sufficient environmental grounds to permit the FSR variation in this instance.

The proposal complies with the objectives of the development standard and the R2 Low Density Residential zone as demonstrated below in this report. It has been demonstrated within this variation request that the numerical departure from the FSR development standard does not result in any external impacts and the level of consistency with the scale of the built form in the surrounding area confirms that the intensity of development is appropriate for the site.



Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the FSR variation in this instance.

**5. The proposed development will be in the public interest because it is consistent with the objectives standard and the zone**

Above in this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the R2 Low Density Zone as detailed below:

- To provide for the housing needs of the community within a low-density residential environment.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - To encourage development that promotes walking and cycling.
  - To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.
  - To protect the amenity of residents.
  - To encourage housing affordability.
  - To enable small-scale business uses in existing commercial buildings.
- The proposed alterations and additions to an existing dwelling house are permissible in the R2 Low Density Residential zone and provide for the housing needs of the community in a low density environment.
  - The proposed development will meet the housing needs of the community and add to the range of housing within the low density residential zone (I.e. the proposal will increase the quality of housing stock within an area which is within close proximity to transport links, public infrastructure and high amenity public spaces).
  - There are numerous examples of extensions and re-constructions of older house stock within the locality. Therefore, it can be said the area is under transition. Due to the sensitive and sympathetic design of the proposed addition, being located to the rear section of the dwelling and within the existing building footprint, the proposal will not detract from the quality of the streetscape and will positively contribute to the desired future character of the area.
  - The proposal will not generate any adverse impacts on the amenity of the neighbouring properties. The additions are setback a significant distance from all boundaries and comply with the maximum building height standard. Visual and acoustic privacy will be maintained as existing.
  - The proposal is not for affordable housing however does contribute to the quality of housing within the area.
  - The proposal will not impact on the start-up of small-scale business uses in existing commercial buildings.

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance. It is considered that the proposed development is within the environmental capacity of the R2 zone and the variation will not undermine the standard, hence it is in the public Interest.

**6. In deciding whether to grant concurrence, the Planning Secretary must consider:**

***(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning***

**Assessment:** There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.

***(b) the public benefit of maintaining the development standard***

**Assessment:** The variation in FSR will not present any unreasonable impacts upon adjoining development or the public domain over what would generally be considered acceptable given the characteristics of the land, the arrangement of the built form and any future relationships both existing and envisaged.

The interface of the development with the public domain will be consistent with the intent of the clause (i.e., the development does not result in any significant changes to its existing streetscape presentation).

The proposed development meets the needs and requirements of the growing family, by providing additional habitable space. The proposal retains and maintains the high quality landscaping and private open space on the site.

The proposed development will be in the public interest because it is consistent with the objectives of the R2 Low Density Residential zone (i.e., the objectives of the zone encourage a variety of housing forms).

Accordingly, there is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to this standard.

***(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.***

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above.

**7. Conclusion**

For reasons discussed above in this variation statement, it is considered that the proposed development and the extent of variation proposed is of a low and acceptable level of impact. This variation request had adequately demonstrated that the extent of the variation sought is justified and compliance with the FSR control in this circumstance is unreasonable or unnecessary.

The development remains compliant with all other relevant standards and controls and ensures the existing high internal and external amenity of both the internal occupants and the surrounding properties is retained.

It has also been demonstrated that there are sufficient environmental planning grounds to justify the non-compliance. The FSR exceedance does not contribute to non-compliance with any other applicable planning controls, and hence do not result in an increase in bulk and scale. The proposed increase in FSR results in improved internal amenity whilst ensuring there are no additional amenity impacts on the neighbouring properties. Based on this, it is requested that Council considers the merits of this application.

## Appendix 2: DCP Compliance Table

### 3.1 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R2 Low Density Residential	<b>Yes</b>
<b>2</b>	<b>Site planning</b>		
<b>2.1</b>	<b>Minimum lot size and frontage</b>		
	Minimum lot size (RLEP): • R2 = 400sqm • R3 = 325sqm	521.7m <sup>2</sup>	NA
	<b>Minimum frontage</b>		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	Min = 12m Existing = 18.29m	Yes, but NA as it is not proposed to create a new lot.
<b>2.3</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% <b>451 to 600 sqm = 50%</b> 601 sqm or above = 45%	Site = 521.7m <sup>2</sup> Existing = 214.3m <sup>2</sup> 41% Proposed = no change	No but existing
<b>2.4</b>	<b>Landscaping and permeable surfaces</b>		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% <b>iii) 451 to 600 sqm = 30%</b> iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site = 521.7m <sup>2</sup> Existing = approx. 94m <sup>2</sup> or 18% Proposed = no change	No but existing
<b>2.5</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m <b>451 to 600 sqm = 7m x 7m</b> 601 sqm or above = 8m x 8m	Site = 521.7m <sup>2</sup> Existing = 127.6m <sup>2</sup> Proposed = no change	Yes
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = 0.65:1</b>	Site area = 521.7m <sup>2</sup> Existing FSR = 0.62:1 Proposed FSR =	No A cl4.6 variation to standard is submitted.

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DCP Clause	Controls	Proposal	Compliance
		0.69:1	
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	Existing = 8.58m Proposed = 9.5m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Existing= 5.82m Proposed= 6m Floor to ceiling: Ground: 2.35m ensuite and 2.45m living. First: 2.58m. Second proposed 2.4m	Wall height: Yes Ceiling height: No for any, but ground and first floor are existing. The proposal 1.8-3.4m bedroom meets the BCA requirement
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b> 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 iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	Minimum= 6m Existing= 5.67m Proposed= 6.4m	No – no change to original. New work complies
<b>3.3.2</b>	<b>Side setbacks:</b> Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 <sup>st</sup> floor) 1500mm above • <b>Frontage over 12m = 1200mm (Gnd &amp; 1<sup>st</sup> floor), 1800mm above.</b>  Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum=1.2m Existing= West: 1.3m and east: 2.2m  Proposed= No change to ground and first floor. 2 <sup>nd</sup> storey: Matches existing	Yes
<b>3.3.3</b>	<b>Rear setbacks</b> 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	Minimum = 7.13m Existing = 5.1m Proposed = 5.1m. New storey is matches existing upper level setback at rear.	No currently but having regard to existing setback, compliance is not required noting that the proposed upper level sits well beyond existing setback at the rear.

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DCP Clause	Controls	Proposal	Compliance
	<p>comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> <li>- Compatibility</li> <li>- POS dimensions comply</li> <li>- minimise solar access, privacy and view sharing impacts</li> </ul> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
<b>4</b>	<b>Building design</b>		
<b>4.1</b>	<b>General</b>		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> <li>• articulated to enhance streetscape</li> <li>• stepping building on sloping site,</li> <li>• no side elevation greater than 12m</li> <li>• encourage innovative design</li> </ul>	The construction within the roof responds to the existing streetscape	Yes
<b>4.4</b>	<b>Roof Design and Features</b>		
	<p><i>Rooftop terraces</i></p> <p>i) on stepped buildings only (not on uppermost or main roof)</p> <p>ii) above garages on sloping sites (where garage is on low side)</p> <p><i>Dormers</i></p> <p>iii) Dormer windows don't dominate</p> <p>iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</p> <p>v) Multiple dormers consistent</p> <p>vi) Suitable for existing</p> <p><i>Celestial windows and skylights</i></p> <p>vii) Sympathetic to design of dwelling</p> <p><i>Mechanical equipment</i></p> <p>viii) Contained within roof form and not visible from street and surrounding properties.</p>	<p>No rooftop terraces or dormers proposed</p> <p>New roof form reflects existing pitch.</p>	Proposed new roof design is consistent and suitable for existing dwelling form.
<b>4.5</b>	<b>Colours, Materials and Finishes</b>		
	<p>i) Schedule of materials and finishes</p> <p>ii) Finishing is durable and non-reflective.</p> <p>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)</p> <p>iv) Articulate and create visual interest by using combination of materials and finishes.</p> <p>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</p> <p>vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)</p>	<p>Provided but no roofing material shown, although it appears to be tiles.</p> <p>No fencing materials are provided</p>	No – could be conditioned.
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	i) Portion of north-facing living room windows	No change	Yes

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DCP Clause	Controls	Proposal	Compliance
	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.		
	<b>Solar access to neighbouring development:</b> 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: <ul style="list-style-type: none"> <li>Degree of meeting the FSR, height, setbacks and site coverage controls.</li> <li>Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.</li> <li>Topography of the subject and adjoining allotments.</li> <li>Location and level of the windows in question.</li> <li>Shadows cast by existing buildings on the neighbouring allotments.</li> </ul>	All achieved – no change	Yes
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> <li>Skylights (ventilated)</li> <li>Clerestory windows</li> <li>Fanlights above doorways</li> <li>Highlight windows in internal partition walls</li> </ul> ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	Skylight proposed to ensuite area	Skylight not shown on all plans and should be conditioned.
<b>5.3</b>	<b>Visual Privacy</b>		

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DCP Clause	Controls	Proposal	Compliance
	<b>Windows</b>		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> <li>- windows are offset or staggered</li> <li>- minimum 1600mm window sills</li> <li>- Install fixed and translucent glazing up to 1600mm minimum.</li> <li>- Install fixed privacy screens to windows.</li> <li>- Creating a recessed courtyard (minimum 3m x 2m).</li> </ul> <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p>Proposed windows to face north to the rear. No privacy screens proposed and partially glazed bedroom proposed, although solid to 1m above floor level</p>	<p>Improved privacy could be conditioned if required</p>
	<b>Balcony</b>		
	<p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>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)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	<p>No change to upper level balconies</p>	<p>NA – no change</p>
<b>5.4</b>	<b>Acoustic Privacy</b>		
	<p>i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> <li>- Locate noise-generating areas and quiet areas adjacent to each other.</li> <li>- Locate less sensitive areas adjacent to the party wall to serve as noise buffer.</li> </ul>	<p>Generally as existing</p>	<p>Yes</p>
<b>5.5</b>	<b>Safety and Security</b>		
	<p>i) dwellings main entry on front elevation (unless narrow site)</p> <p>ii) Street numbering at front near entry.</p> <p>iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place.</p> <p>iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)</p>	<p>All provided</p>	<p>Yes</p>
<b>5.6</b>	<b>View Sharing</b>		
	<p>i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.</p> <p>ii) retaining existing views from the living</p>	<p>Additional material provided indicates there are no</p>	<p>Yes.</p>

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DCP Clause	Controls	Proposal	Compliance
	iii) areas are a priority over low use rooms 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. (certified height poles used)	substantial views likely enjoyed by neighbours,	
<b>6</b>	<b>Car Parking and Access</b>		
<b>6.1</b>	<b>Location of Parking Facilities:</b>		
	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. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	1 access, forward of front façade but existing	No but existing
<b>6.2</b>	<b>Parking Facilities forward of front façade alignment (if other options not available)</b>		
	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)	Existing	Existing no change
<b>6.3</b>	<b>Setbacks of Parking Facilities</b>		

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DCP Clause	Controls	Proposal	Compliance
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> <li>- nil side setback on adjoining property;</li> <li>- streetscape compatibility;</li> <li>- safe for drivers and pedestrians; and</li> <li>- Amalgamated driveway crossing</li> </ul>	Yes - existing	Yes existing
<b>6.4</b>	<b>Driveway Configuration</b>		
	Maximum driveway width: <ul style="list-style-type: none"> <li>- Single driveway – 3m</li> <li>- Double driveway – 5m</li> </ul> Must taper driveway width at street boundary and at property boundary	No 4m existing	No but existing
<b>6.5</b>	<b>Garage Configuration</b>		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> <li>- Single garage – 3m</li> <li>- Double garage – 6m</li> </ul> iii) 5.4m minimum length of a garage iv) 2.6m max wall height of 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	No change Double garage exists	Yes no change
<b>7</b>	<b>Fencing and Ancillary Development</b>		
<b>7.1</b>	<b>General - Fencing</b>		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street		
<b>7.2</b>	<b>Front Fencing</b>		
	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: <ul style="list-style-type: none"> <li>- Site faces arterial road</li> <li>- Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment).</li> </ul> <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i>	Front fence is metal pickets on masonry, except in areas leading to the front door and the driveway, where the metal pickets form doorways. This is allowing for open design. The fence is up to 1.7m in height just prior to the step downs. The solid portion forms no more than 600mm of that height. It	Generally yes. The area generally has low fencing and a 1.2m high fence would be more suitable to the streetspace. Can be conditioned to be a maximum of 1.2m with a solid portion not exceeding 600mm. Materials are not specified in the plans

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DCP Clause	Controls	Proposal	Compliance
	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.	aligns with property boundary.	
<b>7.3</b>	<b>Side and rear fencing</b>		
	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.	Additional fencing is proposed on the returns in the front setback to the existing side fences. They are not more than 1800mm	Yes, however recommend conditions to meet with proposed conditions for front fence
<b>7.5</b>	<b>Swimming pools and Spas</b>		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	Existing, constructed under complying development	No change
<b>7.6</b>	<b>Air conditioning equipment</b>		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	None indicated	NA
<b>7.8</b>	<b>Clothes Drying Facilities</b>		
	i) Located behind the front alignment and not be prominently visible from the street	None shown	No
<b>8</b>	<b>Area Specific Controls</b>		

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### 3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	<b>Vehicle Parking Rates</b>		
	1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms  Note: Tandem parking for 2 vehicles is allowed.	2	Yes

#### Attachment/s:

1. RLPP Dev Consent Conditions - DA/561/2021 - 16 Johnston Parade, MAROUBRA

**Responsible officer:** Urban Perspectives, Town Planners

**File Reference:** DA/561/2021

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**Development Consent Conditions  
(dwellings and dual occupancies)**

<b>Folder /DA No:</b>	DA/561/2021
<b>Property:</b>	16 Johnston Parade, MAROUBRA NSW 2035
<b>Proposal:</b>	Alterations and additions to an existing dwelling house (Variation to FSR).
<b>Recommendation:</b>	Approval

**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**

- 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:

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Roof DA-02.40 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Site Plan DA-03.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Ground Floor DA-04.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
First floor DA-04.20 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Second floor DA-04.30 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Sections DA-05.00 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Front and rear elevations DA-06.00 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
East and west elevation DA-06.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Streetscapes DA-06.40 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Building & area calculations DA-	Pinnacle Design Studio	18.11.2021	19.11.2021



07.00 Rev 3			
BCA compliance DA-07.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Perspectives DA-08.00 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
External finishes and materials DA-08.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Sediment control plan DA-10.00 Rev 1	Pinnacle Design Studio	18.08.2021	08.09.2021
Waste Management Plan DA-10.10 Rev 1	Pinnacle Design Studio	18.08.2021	08.09.2021

<b>BASIX Certificate No.</b>	<b>Dated</b>	<b>Received by Council</b>
A429097	25 August 2021	08.09.2021

#### **Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a. The plans are to be amended to ensure that the operable skylight above the bath in the additional bedroom on the second floor is shown on all roof plans.
  - b. The External finishes and materials plan DA-08.10 Rev 3 is to be amended to include the roof materials of tile and the fencing materials of rendered masonry at the base with metal paling above.
  - c. The plans are to be amended to show that the front fence is to be a maximum of 1.2 metres in height with a maximum of 150mm additional height adjacent to any stepping. The solid portion is not to exceed 600mm at any location. The plans are to indicate a tapering of the proposed new side fences from 1.2m in height to the existing side fencing.

#### **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. 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.

#### **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 \$481,864.90 the following applicable monetary levy must be paid to Council \$4,818.65.

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:

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

Where:

**IDC** = the indexed development cost

**ODC** = the original development cost determined by the Council

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

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

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au).

#### **Compliance Fee**

6. A development compliance and enforcement fee of \$481.86 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.*

#### **Security Deposits**

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

- \$600 - Damage / Civil Works Security Deposit

The 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 works which confirms that there has been no damage to Council's assets and infrastructure.

The developer/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 and other assets 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 Development Engineer upon issuing of an occupation certificate or completion of the civil works.

#### Sydney Water Requirements

9. 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™** 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.

#### 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 & Relevant Standards

10. 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).

#### BASIX Requirements

11. 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 Certifying Authority.

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.

**Stormwater Drainage**

12. 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:-
- Surface water/stormwater drainage systems must be provided in accordance with the relevant provisions of the Building Code of Australia (Volume 2) and relevant Standards;
  - 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;
  - 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;
  - 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;
  - 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;
  - A certificate, from a suitably qualified person must be submitted to the Principal Certifier and Council, prior to the issue of an Occupation Certificate, which confirms that the stormwater drainage system has been provided in accordance with the requirements of this consent, relevant standards and requirements.

**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 and Building Inspection Requirements**

13. Prior to the commencement of any building works, the following requirements must be complied with:
- 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.
  - a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and

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- 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**

14. 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 relevant 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.

**Dilapidation Reports**

15. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
  - new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);
  - excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
  - as otherwise may be required by the *Principal Certifier*.

The dilapidation report shall include details of the current condition and status of any dwelling, associated garage or other substantial structure located upon the adjoining premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifier*.

The dilapidation report must be submitted to the Council, the *Principal Certifier* 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).

**Construction Noise & Vibration Management Plan**

16. Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant requirements of the *Protection of the Environment Operations Act 1997* and NSW EPA Guidelines must be satisfied at all times.

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 strategies.

A *Construction Noise Management Plan*, prepared in accordance with the NSW EPA Construction Noise Guideline by a suitably qualified person, is to be implemented throughout

the works, to the satisfaction of the Council. A copy of the strategy must be provided to the Principal Certifier and Council prior to the commencement of works on site.

#### **Construction Site Management Plan**

17. 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 / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- 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.

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

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**

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

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.

#### **Demolition & Construction Waste Plan**

19. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.

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

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.

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

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#### Public Utilities

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

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

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

#### 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

21. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of 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

22. 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

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"><li>• Monday to Friday - 7.00am to 5.00pm</li><li>• Saturday - 8.00am to 5.00pm</li><li>• Sunday &amp; public holidays - No work permitted</li></ul>
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"><li>• Monday to Friday - 8.00am to 5.00pm</li><li>• Saturday - No work permitted</li><li>• Sunday &amp; public holidays - No work permitted</li></ul>

*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**

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

- Occupational Health & Safety legislation and WorkCover NSW requirements
- Randwick City Council's Asbestos Policy
- A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or as otherwise specified by WorkCover 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 2005*. Details of the landfill site (which must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.
- 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 upon 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](http://www.randwick.nsw.gov.au) in the Building & Development Section or a copy can be obtained from Council's Customer Service Centre.*

#### **Excavations, Back-filling & Retaining Walls**

25. 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.

#### **Support of Adjoining Land**

26. 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.

27. 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*:

- 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*.

**Sediment & Erosion Control**

28. 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.

Details of the sediment and erosion control measures to be implemented on the site must be included in with the Construction Management Plan and be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

**Public Safety & Site Management**

29. 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) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open out into the road or footway.
- 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.
- h) 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.
- i) Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

#### Site Signage

30. 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".

#### Survey Requirements

31. 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 to the satisfaction of the Principal Certifier:
- prior to construction (pouring of concrete) of the footings or first completed floor slab,
  - upon completion of the building, prior to issuing an occupation certificate,
  - 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, if the Council is not the Principal Certifier for the development.

#### Building Encroachments

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

#### 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.

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**Occupation Certificate Requirements**

33. 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 & Certification**

34. 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 any relevant BASIX commitments and requirements have been satisfied.

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

**Council's Infrastructure & Vehicular Crossings**

35. 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 Policy for "Vehicular Access and Road and Drainage Works" and the following requirements:
- a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.
  - b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a *Pre-paid Works Application Form*, prior to issuing an occupation certificate, together with payment of the relevant fees.
  - c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
  - d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.

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

36. 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.*

**OPERATIONAL CONDITIONS**

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

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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.

**External Lighting**

37. 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.

**Waste Management**

38. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.

**Plant & Equipment – Noise Levels**

39. The operation of all plant and equipment on 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 LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 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 Environment Protection Authority (EPA) Noise Control Guidelines.

**Air Conditioners**

40. 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.

**Use of parking spaces**

41. 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.

**GENERAL 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 requirements. 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 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:

- 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.
- A3 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.
- A4 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.
- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 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.
- A7 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.
- A8 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).
- A9 The finished ground levels external to the building must be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.

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- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

## Development Consent Conditions (Dwellings and dual occupancies)



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<b>Folder /DA No:</b>	DA/561/2021
<b>Property:</b>	16 Johnston Parade, MAROUBRA NSW 2035
<b>Proposal:</b>	Alterations and additions to an existing dwelling house (Variation to FSR).
<b>Recommendation:</b>	Approval

### 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

- 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:

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Roof DA-02.40 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Site Plan DA-03.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Ground Floor DA-04.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
First floor DA-04.20 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Second floor DA-04.30 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Sections DA-05.00 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Front and rear elevations DA-06.00 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
East and west elevation DA-06.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Streetscapes DA-06.40 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Building & area calculations DA-	Pinnacle Design Studio	18.11.2021	19.11.2021

07.00 Rev 3			
BCA compliance DA-07.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Perspectives DA-08.00 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
External finishes and materials DA-08.10 Rev 3	Pinnacle Design Studio	18.11.2021	19.11.2021
Sediment control plan DA-10.00 Rev 1	Pinnacle Design Studio	18.08.2021	08.09.2021
Waste Management Plan DA-10.10 Rev 1	Pinnacle Design Studio	18.08.2021	08.09.2021

<b>BASIX Certificate No.</b>	<b>Dated</b>	<b>Received by Council</b>
A429097	25 August 2021	08.09.2021

**Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a. The plans are to be amended to ensure that the operable skylight above the bath in the additional bedroom on the second floor is shown on all roof plans.
  - b. The external finishes and materials plan DA-08.10 Rev 3 is to be amended to include the roof materials of tile and the fencing materials of rendered masonry at the base with metal paling above.
  - c. The plans are to be amended to show that the front fence is to be a maximum of 1.2 metres in height with a maximum of 150mm additional height adjacent to any stepping. The solid portion is not to exceed 600mm at any location. The plans are to indicate a tapering of the proposed new side fences from 1.2m in height to the existing side fencing.
  - d. The kitchen and laundry including all associated facilities (i.e. sink, bench, cabinets, cooking/laundry appliances, etc) located on the first floor level shall be removed and all associated services (i.e. hot and cold water, gas, electricity and the like) are to be capped and sealed.
  - e. The living, dining and family areas at first floor level shall be used as secondary living area for the occupants of the dwelling house.
  - f. The laundry at first floor level shall be used as storage room.

**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. 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.

**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 \$481,864.90 the following applicable monetary levy must be paid to Council: \$4,818.65.

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:

$$IDC = ODC \times CP2/CP1$$

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 Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au).

**Compliance Fee**

6. A development compliance and enforcement fee of \$1,011.90 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.*

**Security Deposits**

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

- \$600 - Damage / Civil Works Security Deposit

The 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 works which confirms that there has been no damage to Council's assets and infrastructure.

The developer/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 and other assets 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 Development Engineer upon issuing of an occupation certificate or completion of the civil works.

#### **Sydney Water Requirements**

9. 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™ 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.

#### **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 & Relevant Standards**

10. 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).

#### **BASIX Requirements**

11. 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 Certifying Authority.

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.

**Stormwater Drainage**

12. 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 provisions of the Building Code of Australia (Volume 2) and relevant Standards;
  - 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;
  - f) A certificate, from a suitably qualified person must be submitted to the Principal Certifier and Council, prior to the issue of an Occupation Certificate, which confirms that the stormwater drainage system has been provided in accordance with the requirements of this consent, relevant standards and requirements.

**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 and Building Inspection Requirements**

13. 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**

14. 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 relevant 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.

#### **Dilapidation Reports**

15. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
  - new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);
  - excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
  - as otherwise may be required by the *Principal Certifier*.

The dilapidation report shall include details of the current condition and status of any dwelling, associated garage or other substantial structure located upon the adjoining premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifier*.

The dilapidation report must be submitted to the Council, the *Principal Certifier* 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).

#### **Construction Noise & Vibration Management Plan**

16. Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant requirements of the *Protection of the Environment Operations Act 1997* and NSW EPA Guidelines must be satisfied at all times.

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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 strategies.

A *Construction Noise Management Plan*, prepared in accordance with the NSW EPA Construction Noise Guideline by a suitably qualified person, is to be implemented throughout the works, to the satisfaction of the Council. A copy of the strategy must be provided to the Principal Certifier and Council prior to the commencement of works on site.

**Construction Site Management Plan**

17. 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 / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- 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.

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

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**

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

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.

**Demolition & Construction Waste Plan**

19. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.

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

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP

forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.

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

#### Public Utilities

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

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

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

#### 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

21. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of 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

22. 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

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> <li>• Monday to Friday - 7.00am to 5.00pm</li> <li>• Saturday - 8.00am to 5.00pm</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 5.00pm</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work</li> </ul>

	permitted
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*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**

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

- Occupational Health & Safety legislation and WorkCover NSW requirements
- Randwick City Council's Asbestos Policy
- A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or as otherwise specified by WorkCover 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 2005*. Details of the landfill site (which must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.
- 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 upon 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](http://www.randwick.nsw.gov.au) in the Building & Development Section or a copy can be obtained from Council's Customer Service Centre.*

#### **Excavations, Back-filling & Retaining Walls**

25. 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.

**Support of Adjoining Land**

26. 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.
27. 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*:
- 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*.

**Sediment & Erosion Control**

28. 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.

Details of the sediment and erosion control measures to be implemented on the site must be included in with the Construction Management Plan and be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

**Public Safety & Site Management**

29. 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) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open out into the road or footway.
- 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.
- h) 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.
- i) Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

**Site Signage**

- 30. 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".

**Survey Requirements**

- 31. 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 to the satisfaction of the Principal Certifier:
  - prior to construction (pouring of concrete) of the footings or first completed floor slab,
  - upon completion of the building, prior to issuing an occupation certificate,
  - 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, if the Council is not the Principal Certifier for the development.

**Building Encroachments**

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

**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*'.

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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**

33. 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 & Certification**

34. 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 any relevant BASIX commitments and requirements have been satisfied.

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

#### **Council's Infrastructure & Vehicular Crossings**

35. 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 Policy for "Vehicular Access and Road and Drainage Works" and the following requirements:
- a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.
  - b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a *Pre-paid Works Application Form*, prior to issuing an occupation certificate, together with payment of the relevant fees.
  - c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
  - d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.

#### **Street and/or Sub-Address Numbering**

36. 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.*

#### **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.

**External Lighting**

37. 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.

**Waste Management**

38. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.

**Plant & Equipment – Noise Levels**

39. The operation of all plant and equipment on 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 LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 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 Environment Protection Authority (EPA) Noise Control Guidelines.

**Air Conditioners**

40. 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.

**Use of parking spaces**

41. 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.
42. The premises is to be used as a single residential dwelling only at all times and must not be used for dual or multi-occupancy purposes.

**GENERAL 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 requirements. 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 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:

- 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.

A3 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.

A4 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.

A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works

A6 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.

A7 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.

A8 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).

A9 The finished ground levels external to the building must be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground

A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.

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- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

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