

# Randwick Local Planning Panel (Electronic) Meeting

Thursday 11 August 2022



## **RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)**

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Teams on Thursday, 11 August 2022

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

#### **Development Application Reports**

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Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D48/22

**Subject:** 416-422 Anzac Parade, Kingsford (DA/620/2021)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works
<b>Ward:</b>	West Ward
<b>Applicant:</b>	Amalgamated Hotels Pty Ltd
<b>Owner:</b>	Amalgamated Hotels Pty Ltd
<b>Cost of works:</b>	\$1,116,640
<b>Reason for referral:</b>	Development that contravenes a development standard by more than 10%.

### Recommendation

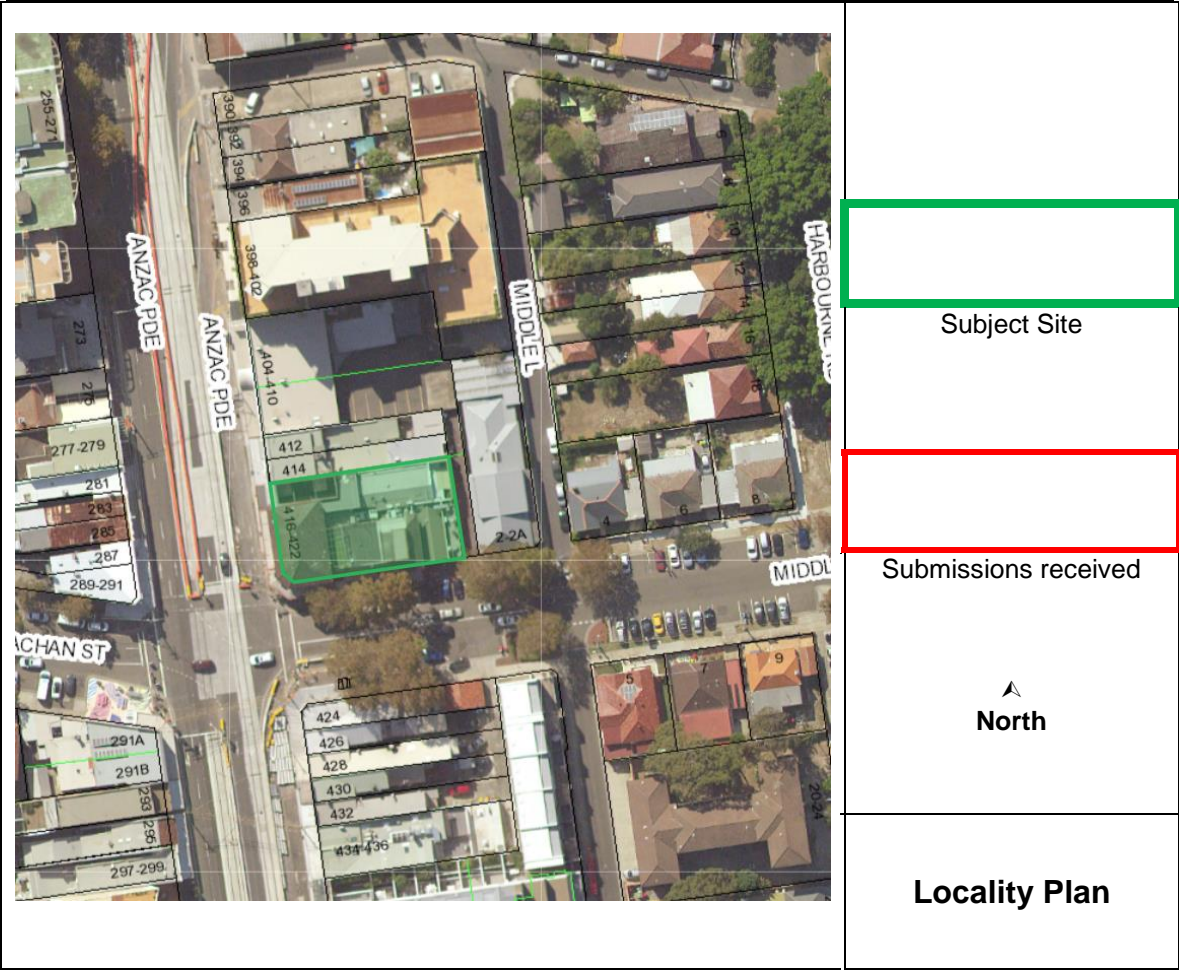
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the non-residential floor space ratios development standard in Clause 6.19 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning 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/620/2021 for Alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works (variation to FSR of the RLEP 2012), at No. 416-422 Anzac Parade, Kingsford, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  Draft RLPP Conditions of Consent - DA/620/2021 - 416-422 Anzac Parade, KINGSFORD NSW 2032 - DEV - Randwick City Council

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1. Executive summary

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

- The development contravenes the development standard for non-residential FSR by more than 10%.

The proposal seeks development consent for alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works. The works are limited to the Ground Floor level of the hotel only, with no works proposed to the upper levels or basement area.

The key issues associated with the proposal relate to non-compliance with the minimum non-residential floor space ratios applicable to the Kensington and Kingsford town centres which require a non-residential floor space ratio of 1:1 for the subject site. The proposal is for alterations and additions to the existing building and not a substantial refurbishment of the site, as such a commercial FSR below the 1:1 is to be maintained on the site. The key issues also relate to the management of the outdoor areas with regards to acoustic privacy and ensuring there is no unreasonable impacts upon surrounding properties, and the use of the adjoining restaurant to service the pub in the absence of and removal of the existing kitchen.

The proposal is recommended for approval subject to non-standard conditions that require minor amendments to the submitted Plan of Management, and conditions in relation to the food premises and compliance with the relevant provisions.



## 2. Site Description and Locality

The subject site is known as 416-422 Anzac Parade, Kingsford and has a legal description of Lot X in Deposited Plan 394239. The site is regular in shape, being primarily rectangular with a angled corner frontage, and has a total area of approximately 758.8m<sup>2</sup>. The site is a corner allotment, located on the eastern side of Anzac Parade and the northern side of Middle Street. There is no vehicular access to the subject site, and pedestrian access is currently gained via the 18.895m frontage to Anzac Parade and 35.05m frontage to Middle Street. The site is predominantly flat with the existing building occupying the majority of the site, with the exception of two (2) courtyards.

The site is zoned B2 Local Centre and is currently occupied by the Regent Hotel, which would appropriately be defined as a “pub” pursuant to RLEP 2012. The property is surrounded by commercial developments to the north, south, east and west. Residential developments are located to the east of the site on the eastern side of Middle Lane.

The subject site is identified as being within the Kingsford Town Centre, and as part of a strategic node site under the Kensington and Kingsford Town Centres Development Control Plan (Part E6). The subject site is also identified as being a contributory building under the K2K DCP, and is identified as being within the vicinity of a Heritage Item, being “O’Dea’s Corner” at 424-436 Anzac Parade.

The existing streetscape is characterised by a variety of architectural styles, with buildings comprising single storey up to nine (9) storeys. The area is considered to be an area under transition, noting the adoption of the Kensington and Kingsford DCP and gazettal of the K2K provisions within RLEP in 2020 which anticipate a higher density and alternative character for the area.

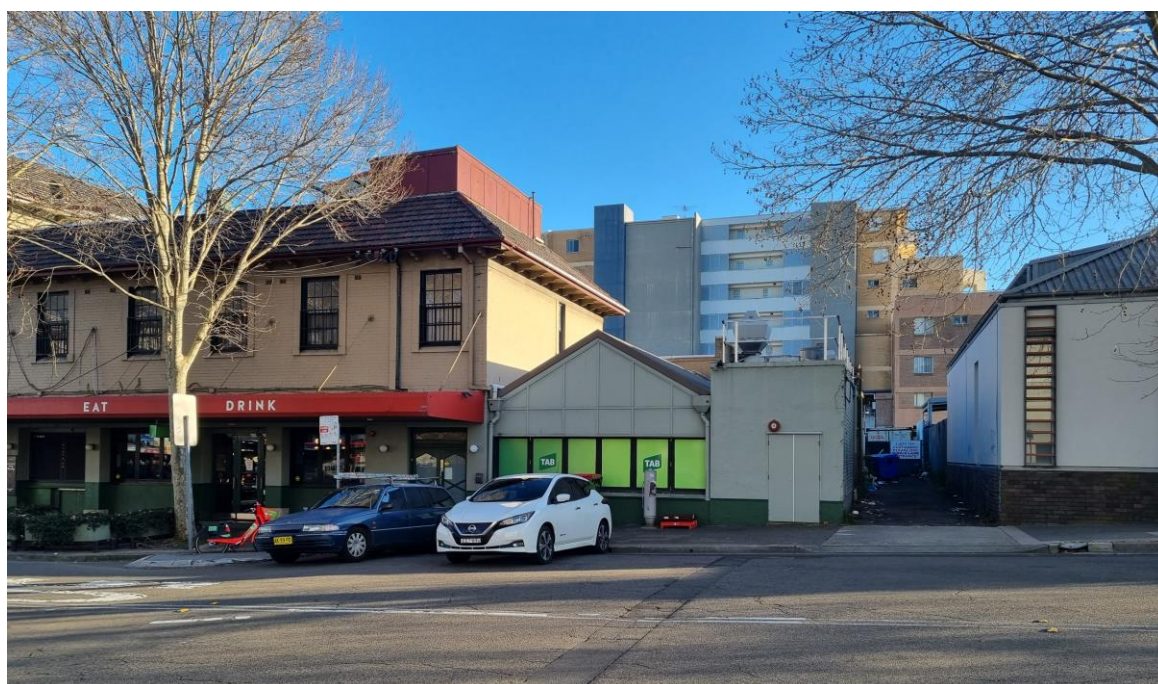


Figure 1 – Middle Street frontage (proposed external works located within the south-eastern corner).



Figure 2 – South-eastern corner, proposed outdoor gaming lounge.



Figure 3 – Rear eastern lane frontage.

### 3. Relevant history

The subject site has been used for the purpose of the Regent Hotel for an extended period of time, and has been subject to numerous Development Applications and Modification Applications over the years. A search of Council's electronic records revealed the following most recent and/or relevant applications for the site:

#### 07 November 2001

Development Application DA/796/2001 for alterations including internal modifications to the existing hotel was approved by Council.

#### 08 April 2003

Development Application DA/171/2003 for refurbishment of the gaming lounge on the existing ground floor was approved by Council.

#### 01 February 2007

Development Application DA/778/2006 approved internal and external alterations to the existing Regent Hotel including reconfiguring the public bar and replacement of existing bottleshop with a new open air beer garden, alterations to the gaming room to provide smoking and non smoking areas, repositioning of internal stairs, relocation of the ladies toilet and new disabled toilet. A Construction Certificate was issued for the works in April 2007.

#### 17 September 2009

Development Application DA/179/2009 which sought consent for the construction of an outdoor smokers area and a smoking gaming lounge in the north-eastern corner of the Regent Hotel at ground level was refused.

#### 12 August 2013

Development Application DA/133/2013 for alterations and additions to Regent Hotel including construction of a new outdoor gaming area, relocation of southern entry door, replacement of western entry door and associated works, was approved by Council. With regards to the outdoor gaming area, a condition of consent was imposed that limited the maximum number of patrons within the outdoor gaming area to 30 patrons at any one time. A search of Council's records revealed that the development consent DA/133/2013 was never acted upon and has since lapsed.

#### 22 April 2016

Development Application DA/736/2015 which sought to increase in capacity of beer garden of the Regent Hotel (located on Anzac Parade frontage) to 60 patrons between midnight and 6am (current capacity is 30 patrons from midnight to 2am and 20 patrons between 2am and 6am), was refused by Council.

#### 17 March 2016

Development Application DA/759/2015 which sought consent for a new footpath dining area on Middle Street was refused by Council.

#### *Current Application*

#### 08 October 2021

The subject Development Application was lodged with Council. The application was internally referred to Council's Heritage Planner, Development Engineer, Environmental Health Officer and Senior Building Surveyor for comment and/or recommendations.

#### 18 May 2022

A request for information was sent to the Applicant which requested further information including an updated acoustic report which assesses the patronage/capacity of the outdoor areas and confirmation on what areas have been included in the assessment, and concerns regarding inconsistencies in the Plan of Management.

#### 13 July 2022

An updated acoustic report and Plan of Management were submitted to Council. The assessment of the application has been based on the updated report and POM.

### **4. Proposal**

The proposal seeks development consent for alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works (variation to non-residential floor space under clause 6.19 of the RLEP 2012).

Specifically, the applicant seeks consent for the following works:

- Partial demolition of the existing building, including demolition of the existing TAB area, Kitchen, existing gaming lounge, gaming bar, accessible WC and outdoor courtyard;
- New gaming lounge with bar and outdoor TAB booth on the eastern part of the Ground Floor level;
- New accessible entry and fire exit on the Middle Street frontage;
- New accessible toilet and new amenities;

- New planters along the perimeter of the outdoor gaming lounge and outdoor TAB area;
- New metal deck roof over the outdoor areas, including void in roof with louvres;
- New façade treatment to Middle Street including obscured glass doors to new entry, new obscured glass windows, and framed parapet wall;
- Acoustic attenuation works as per acoustic engineers detail.

The acoustic assessment also notes that the outdoor gaming area shall have a capacity of twenty-five (25) gaming machines.

The proposal does not seek to amend the approved hours of operation or the existing capacity numbers of the development. See Key Issues for further discussion.

## 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.

## 6. Relevant Environment Planning Instruments

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

The site is zoned B2 Local Centre under Randwick Local Environmental Plan 2012 and the proposed development being for the purpose of a “pub” is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will support the pub use of the existing development, and subject to the recommended conditions shall not result in any unreasonable impacts upon the amenity of surrounding residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	3:1	1.40:1	<b>Yes</b>
CI 4.3: Building height (max)	24m	Existing building = 16.71m (no change)  Proposed works = 4.718m	<b>Yes</b>
CI 6.19: Non-residential floor space ratio (min)	1:1	0.756:1	<b>No</b> <i>See Clause 4.6 Assessment for further discussion.</i>

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

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

#### 6.1.2. Clause 5.10 - Heritage conservation

The subject site is located within the vicinity of a local heritage item, being O’Dea’s Corner located on the corner of Anzac Parade and Middle Street at 424-436 Anzac Parade. The subject site is also identified as being a contributory building under the Kensington and Kingsford DCP 2020. As such the application was referred to Council’s Heritage Planner for comment and/or recommendations who raised no objection to the proposed development subject to recommended conditions of consent in relation to the submission of colours and materials, preparation of a salvage plan, and details of mechanical ventilation system. See Appendix 1 for further comments. The proposed alterations and additions are not extensive, and are concentrated in one of the least intact sections of the hotel with very limited removal of early fabric. Additionally, the proposed works are proportionate and



sympathetic to the Contributory facades. It is considered that the proposed works shall not result in adverse impacts to the heritage items nearby which are visually separated from the subject site.

## 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 6.19: Non-residential floor space ratios (min)	1:1	0.756:1	179.8m <sup>2</sup>	23.69%

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

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“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 Non-Residential Floor Space Ratio (FSR) development standard (Cl 6.19)**

The applicant’s written justification for the departure from the non-residential FSR standard is contained in Appendix 2.

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

The applicant's written request seeks to justify the contravention of the non-residential 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 objective of the non-residential FSR standard is set out in Clause 6.19 of RLEP 2012 as follows:

- 1) The objective of this clause is to ensure that a suitable level of non-residential floor space is provided to promote commercial and retail activity within the Kensington and Kingsford town centres.*

In this regard, the applicant's written justification notes that the non-residential FSR for the site remains largely unchanged, and that the proposal is for alterations and additions to the existing hotel which will continue to provide commercial/business activity within the Kingsford Town Centre.

Assessing officer's comment:

Clause 6.19 of RLEP 2012, in conjunction with the provisions of the K2K DCP 2020, aim to ensure that a high level of commercial and retail activity is provided within the Kingsford Town Centre as well as residential development, in order to activate the town centres, including activation of the street at Ground Floor level. The proposed development involves alterations and additions to the existing pub, being the Regent Hotel, with the business use being maintained at the Ground Floor level. Furthermore, there shall be no change to the existing residential accommodation at the upper levels of the development, with the proposed works relating solely to the business use. The proposal seeks to update and refurbish the eastern portion of the pub, providing a new outdoor gaming area within the existing site. There shall be a minor reduction to the FSR by 0.004:1 (6m<sup>2</sup>) due to the reconfiguration. It is considered that the ongoing use of the pub shall ensure that a suitable level of non-residential floor space is provided for the Kingsford Town Centre.

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's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the non-residential FSR development standard as the proposal will have a positive planning outcome in that it will allow an updated, more functional and efficient use of the Hotel, will provide a positive streetscape outcome to Middle Street and the town centre, will improve amenity for patrons and staff without unreasonably affecting the amenity of surrounding properties.

Assessing officer's comment:

The proposed development involves alterations and additions to the existing pub, being the Regent Hotel. As outlined above, there shall be no change to the existing residential accommodation at the upper levels of the development, with the proposed works relating solely to the business/pub use. The existing pub area does not comply with the 1:1 non-residential FSR standard (existing non-residential FSR is 0.76:1). In order to comply with the standard, 173.8m<sup>2</sup> of additional commercial floor area would need to be provided within the development. The Ground Floor level of the pub occupies the majority of the site, with the exception of a small outdoor courtyard/beer garden, and therefore any additional commercial floor space would need to be provided at the upper levels of the development. Given that no changes are proposed to the Hotel accommodation on the First and Second Floor levels, it is considered



that strict compliance with the standard would be unreasonable in this instance. The proposed development shall maintain the existing floor area of the pub, with the reduction in FSR at this level due to the installation of planter boxes along the perimeter. The proposed works shall allow the pub to be upgraded which shall enhance the existing use and increase amenity for patrons and staff of the pub.

In view of the above, it is considered that 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, consideration is given to the objectives of the non-residential FSR standard and the B2 zone.

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the B2 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 6.19 non-residential floor space ratio. Therefore the development will be in the public interest. Further, the refurbishment will enhance the usability of the existing facility that will contribute to the variety of business uses in this central location.

**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 minimum non-residential 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 non-residential FSR development standard.

**8. Development control plans and policies**

**8.1. Randwick Comprehensive DCP 2013**

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

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

**9. Environmental Assessment**

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

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

### Intensification of Use

The subject application seeks consent for alterations and additions to the existing premises. The proposed works are limited to the Ground Floor level of the development which comprises the pub. No changes are proposed to the First or Second Floor levels which include hotel accommodation.

The existing premises currently operates under a POM which was approved under development consent DA/778/2006. In accordance with the current development consent, the maximum number of patrons and capacity of the hotel is determined by the number of persons permitted under the Building Code of Australia. However, the current approval does provide restrictions on the use of the outdoor beer garden fronting Anzac Parade and the outdoor Gaming Lounge smoking courtyard as follows:

Beer Garden Maximum Capacity

6am to midnight = 60 persons

Midnight to 2am = 30 persons

2am to 6am = 20 persons

Gaming Lounge Smokers Courtyard Maximum Capacity

6am to midnight = 30 persons

Midnight to 6am = 4 persons

As per the current approval and POM, the hours of operation of the hotel are as follows:

- Monday to Thursday – 10:00am to 4:00am the following day;
- Friday and Saturday – 10:00am to 6:00am the following day; and
- Sunday - 12:00 noon to 10:00pm.

The subject application does not seek to amend the approved hours of operation which will be consistent with that approved under Development Consent DA/778/2006. However, it is noted that the hours in the updated POM submitted with the subject application state Sunday hours as 12:00am to 10:00pm which appears to be an error. In order to provide clarification and ensure the hours are adhered to it is recommended that the POM be update to state 12 noon.

It is also noted that the submitted POM does not make any reference to the capacity of the beer garden. As such to ensure that this existing condition of consent for DA/778/2006 is adhered to it is also recommended that the POM be updated to include the capacity of the beer garden.

Council calculated that the proposed “outdoor” Gaming lounge and TAB have the capacity to accommodate a total of 169 persons (141 people in the gaming lounge and 28 in the TAB area). These areas shall be roofed, however are open along the perimeter with louvres provided above. The acoustic report originally submitted did not provide any information regarding the assumed number of patrons within these areas from an acoustic perspective, therefore in response to concerns raised by Council regarding the insufficient information, an updated acoustic report was provided on 7 July 2022. The updated report specifies a maximum number of 20 persons in the TAB area and a maximum of 65 persons in the outdoor gaming room. These maximum capacities have been included in the updated POM under Part 3.

The proposed development involves the internal reconfiguration of the Ground Floor level to include a new outdoor gaming lounge and TAB area. The proposed works also include additional toilet facilities and removal of the kitchen along the eastern side of the development. The proposal shall result in a slight reduction to the overall FSR of the Ground Floor level by 0.004:1 or 6m<sup>2</sup> of GFA. While it is accepted that the overall FSR of the pub shall be reduced, consideration has also been given to whether there is a reduction or increase to the public areas within the premises, being those areas which shall determine the number of patrons permitted within the pub. Council calculates that the existing internal areas within the Ground Floor level (exclusive of the bars) would be approximately 574.162m<sup>2</sup>, and the public spaces of the pub (excluding the toilets and circulation space) would be 378.26m<sup>2</sup>. The resultant areas proposed would be approximately 557.217m<sup>2</sup> for the internal areas exclusive of the bars, and 374.42m<sup>2</sup> for the public spaces within the pub (excluding toilets and circulation but including the new outdoor gaming and TAB areas). As such, it is considered that the proposed reconfiguration and alterations shall not trigger any increase in patron numbers to that which currently exists.

Adjoining Site

As part of the subject application, the existing kitchen shall be removed. Concerns were raised by Council's Environmental Health Officer regarding the removal of the kitchen and the ability to be able to provide food to the customers of the pub. The Applicant advised that food will be provided to patrons in the Hotel/pub from the kitchen in the adjoining restaurant located at 412-414 Anzac Parade which is under the same ownership as the Hotel. A new access door into the adjoining premises is proposed to facilitate entry and egress to the restaurant kitchen to be accessed by staff of the respective premises. The intention was that the existing restaurant would provide food to both patrons of the Hotel/pub and of the restaurant. Furthermore, the Applicant advised that the kitchen in the adjoining premises would be available to the Hotel during their current trading hours, with no access to the adjoining premises outside of the restaurants approved hours, and confirmed that

*“there is no requirement for full ‘kitchen produced’ meals outside of lunch and dinner trade. The Hotel will abide by its requirement under the Liquor Act by having meals available at all times when trading by having pre prepared meals and snacks that can be provided on request”.*

Given that adjoining premises is being utilised to provide food for the Hotel in the absence of any kitchen within the subject premises, it was considered that the proposal would result in an intensification of use of the adjoining premises, and therefore it was considered appropriate to assess the condition of the adjoining restaurant to ensure that it has adequate capacity to accommodate the additional use. As a result of a site visit to the adjoining premises by Council's Environmental Health Officer, it is considered that the adjoining premises would have adequate capacity to service the pub, and appropriate conditions of consent have been imposed by Council's EHO accordingly. See further detailed comments from Council's Environmental Health Officer in Appendix 1.

## 10. Conclusion

That the application to alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works (variation to FSR of the RLEP 2012) 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 Kensington and Kingsford Town Centre DCP 2020.
- The proposal is consistent with the specific objectives of the B2 zone in that the proposed activity and built form will support the pub use of the existing development, and subject to the recommended conditions shall not result in any unreasonable impacts upon the amenity of surrounding 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.
- The development enhances the visual quality of the public domain/streetscape along Middle Street and Middle Lane.
- The proposed development will make a positive contribution to the commercial centre.
- Non-standard conditions of consent have been imposed to ensure the amenity of the subject site and surrounding properties are protected.

## Appendix 1: Referrals

### 1. External referral comments:

#### 1.1. NSW Police

The application was referred to NSW Police for comment and/or recommendation who provided the following advice:

#### **Regent Hotel – 416-422 Anzac Parade, KINGSFORD NSW 2032**

*Alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works.*

#### **Police Submissions:**

*The Eastern Beaches Police Area Command Licensing Unit has reviewed this Development Application for the Regent Hotel. At this time police hold **NO OBJECTIONS** to the application. However, if granted, police respectfully request the following conditions be placed on the licensed premises for compliance.*

#### **CCTV**

*With the addition of any gaming room to an existing licenced premises, there is a higher risk of the venue being exposed to mid-level organised crime in relation to laundering offences. If the application is granted, police requested the following minimum CCTV requirements in attempts for police to identify any offences in relation to organised crime syndicates:*

*(1) The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:*

*(a) the system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times), (b) recordings must be in digital format and at a minimum of ten (10) frames per second, (c) any recorded image must specify the time and date of the recorded image, (d) the system's cameras must cover the following areas:*

*(i) all entry and exit points on the premises, (ii) the footpath immediately adjacent to the premises, and (iii) all publicly accessible areas (other than toilets) within the premises.*

*(2) The licensee must also:*

*(a) keep all recordings made by the CCTV system for at least 30 days, (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to sub-clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*

#### **CRIME SCENE PRESERVATION**

*Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:*

*(1) take all practical steps to preserve and keep intact the area where the act of violence occurred, (2) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website, (3) make direct and personal contact with NSW Police to advise it of the incident, and (4) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.*

*(5) In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.*

#### **SOCIAL IMPACT**

*The business authorised by this licence must not operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining the licence.*

### **GAMBLING INCIDENT REGISTER**

#### **Gambling Incident Register**

- (1) *The licensee must keep and maintain a gambling incident register.*
- (2) *The gambling incident register must record:*
  - (a) *any incident in which a patron of the venue displays or engages in problematic gambling behaviour of the kind specified in the 'Signs of risky and problem gambling behaviour: Know the signs and how to act' factsheet published on the L&GNSW website as amended from time to time.*
  - (b) *the time, location and machine number(s) and brief description (or identity, if known) of any gaming machine player identified displaying or engaging in that behaviour*
  - (c) *any proposed or implemented self or third-party exclusions of gaming machine players (specifying the player's name (where provided or known), membership number (if applicable) and duration of any exclusion) and the patron's response to the same.*
  - (d) *Any breach or attempted breach of a self or third party exclusion*
- (3) *The gambling incident register must also record details of the action taken in response to the incidents, applications and other matters recorded in the register.*
- (4) *The licensee must review the gambling incident register at least on a monthly basis and must consider whether an exclusion order is appropriate for any person who has been asked to self-exclude but has declined to do so.*
- (5) *The information recorded in a gambling incident register must be retained for at least 3 years from when the record was made.*
- (6) *The licensee must, at the request of a police officer or L&GNSW inspector, make any gambling incident register available for inspection.*

## **2. Internal referral comments:**

### **2.1. Heritage planner**

The application was referred to Council's Heritage Planner for comment and/or recommendation who provided the following advice:

#### **The Site**

*The Regent Hotel site is located on the north-east corner of the intersection of Anzac Parade and Middle Street in Kingsford. The hotel forms part of the Kingsford Town Centre. The site is part single-, part two- and part three-storey building, which on the ground floor comprises a front public bar, a saloon bar, a back bar, TAB, kitchen, courtyard, gaming bar, lounge and patron amenities.*

*The hotel is not listed as heritage item on Schedule 5 of the Randwick Local Environmental Plan 2012 and is not within a heritage conservation area.*

*It is in the vicinity of two heritage items. Both are opposite the hotel and are visually separated from the subject site:*

*To the south of the site on the opposite side of Middle Street:*

#### **424–436 Anzac Parade (I152), commercial/residential group, "O'Dea's Corner"**

*The building group is significant as a well-detailed example of a Federation shop / residence group defining suburban main streets of the Federation era and in particular those served by Sydney's expanding tram network. The building group previously included the Democratic Theatre. The group retains substantial detailing in the Federation Arts and Crafts and Federation Freestyles. The building group is associated with noted local resident Frank O'Dea – bookmaker, real estate developer and promoter of cultural activities in the foundation years of South Kensington later renamed Kingsford.*

*To the east of the site:*

#### **9 Middle Street (I157) "Lanor", Edwardian house**

*Excellent Edwardian-style house c. 1920. Traditional front with wide, medium pitched gable. Terra cotta roof extends down over verandah. Outstanding feature is verandah decoration.*



The hotel's functions extend across two buildings, both of which are identified as having Contributory Facades in the Kingsford Centre precinct noted in Section D2.6 of the Randwick Development Control Plan 2013. At 418-422 Anzac Parade, the bulk of the hotel's functions are housed. In earlier works, the hotel was extended at the rear and side and the adjoining commercial building, at 416 Anzac Parade, was incorporated into the hotel to provide a courtyard.

## **Background**

### **The Regent Hotel:**

The Regent Hotel, built in 1931, is a modest example of an Inter-War, Georgian Revival-style hotel of L-shaped form with simply detailed form and elevations. The original design for the hotel, by noted architect Ernest Lindsay Thompson, was far more exuberant, but was not built to his original scheme. A far more stripped version was built, with simplified decorative elements.

The building's interior and exterior were heavily reconfigured during works in 1954, when the hotel was extended into the adjoining commercial premises to the north. The internal works were designed by architect Sydney Warden.

Externally, the hotel has been altered at ground floor, with wall tiling and most of the original windows and doors replaced. Detailing to the ground floor was carried across the elevation to the adjoining shop front.

Internally, the hotel is largely modern, with the original stair relocated. The original bar area was heavily altered in the 1950s and the original tiling and joinery removed or replaced.

A large modern extension was later completed to the north-east. The upper floors are more intact but are typical of the period and have no features of note.

The Heritage Impact Statement by John Oultram Heritage concludes the building would not meet any Heritage Manual criteria for identification as a place of local significance.

### **412-416 Anzac Parade:**

The three shops at 412-416 Anzac Parade – with the hotel occupying the southern-most shop – are examples of Inter-War commercial/residential development built in 1923. The building is a modest example of a two-storey, Inter-War Free-style development with a simply detailed form and elevations. Original internal fabric of the shop at 416 Anzac Parade - incorporated into the Regent Hotel – had been removed. The brickwork has been painted, the first-floor windows altered and part of the original tile roof replaced. The ground floor shop fronts are modern.

## **Proposal**

The proponents seek to alter the ground-floor layout to convert the northern courtyard, the eastern kitchen and TAB into gaming lounge to update and improve functionality. The proposed changes are documented on Drawings Nos. 2606 DA1 0000, 0100, 0500, 0501, 1000, 1101, 3000, 3001, 4000, 4001, 8000, and 8100 (all revision 01) dated February 2021 and prepared by H + E Architects. The building's footprint is not increased.

Proposed works to the ground floor include:

- Removal of the central bar
- New opening and steps to the main bar
- Demolition of the walls to the existing TAB and kitchen
- New gaming bar
- New lobby and walls to outdoor gaming area
- Removal of the structures to the courtyard
- New outdoor TAB and gaming area
- Reconfiguration of the lavatories
- Removal of the doors to the lavatory lobby
- Replacement roof over rear section
- New voids to the rear roofs
- Removal of the framed wall to Middle Street
- New wall, glazing and doors to Middle Street



- *New door to the rear wall*
- *New parapet to rear wall.*

*No changes are proposed to the original fabric of the external facades. A new infill wall to Middle Street would replace a modern glazed gable wall and be in rendered finish with multi-paned glazing and a door with a parapet to the street to align with the new parapet to the rear.*

*The HIS concludes the works would have a neutral impact on the heritage fabric.*

### **Controls**

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

### **Comments**

*The Regent Hotel is a modest example of an Inter-War, Georgian Revival-style hotel with a simple form and simply detailed elevations. It has been heavily altered at the ground level and the original plan of the building is barely readable due to the changes made in 1954. The hotel was not built to its original design.*

*The proposed changes are not extensive and are concentrated in one of the least intact sections of the hotel. The works involve very limited removal of early fabric. The proposed works are largely internal. Changes to the rear of the Middle Street façade would alter only a later addition.*

*The works are not of a scale that would impact on the setting or significance of the two heritage items nearby. Both listed items are visually separated from the subject site.*

*The proposal is in line with the heritage provisions in the RDCP, including retention of original fabric on Contributory facades. Proposed works are proportionate and sympathetic to the Contributory facades. They occur in areas that have previously been altered and involve very limited removal or alteration of early fabric and layouts and will have a limited and acceptable impact on the significance of the place.*

### **Recommendation**

*The following conditions should be included in any consent:*

- *Details of the proposed paint scheme are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.*
- *A salvage plan shall be prepared and submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.*
- *Details of external elements of the proposed mechanical ventilation systems, including layout and dimensions of ductwork, are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.*
- *In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken and the NSW Heritage Office notified under the requirements of the Heritage Act.*

### **2.2. Development Engineer**

The application was referred to Council's Development Engineer for comment and/or recommendation who provided the following advice:

An application has been received for the following:

- demolition of the existing metal deck roof and associated structures, demolition of the existing framed wall and obscured glazing to Middle Street, demolition of the existing masonry wall beyond, demolition of the existing concrete roof, balustrading and kitchen mechanical equipment, and demolition of the ground floor TAB, gaming lounge, back bar, kitchen, and courtyard area.
- an internal reconfiguration of part of the ground floor of the Hotel including a new gaming lounge and TAB (both to comply with the NSW smoke-free legislation), a gaming lobby, new male and female toilets, and a new accessible toilet;
- new planters along the perimeter of the gaming lounge and TAB;
- a new metal deck roof over the gaming lounge and TAB;
- a new wheelchair accessible entry and fire exit door to Middle Street;
- new façade treatment along Middle Street including new obscured glass doors to the new entry, new obscured glass windows, and a new framed parapet wall; and
- acoustic attenuation works, all to the acoustic engineer's details.

### **General Comments**

No objections are raised to the proposal subject to the comments and conditions provided in this report.

### **Drainage Comments**

On site stormwater detention is not required for this development.

The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The applicant is required to submit detailed drainage plans to the certifying authority for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) directly to the kerb and gutter in front of the subject site in Middle Street.

### **Parking Comments**

The proposed development does not generate increased parking demand and as such there are no parking considerations required as part of this assessment.

## **2.3. Environmental Health Officer**

The application was referred to Council's Environmental Health Officer for comment and/or recommendation who provided the following comments:

### **Proposed Development:**

As stated in the Statement of Environmental Effects submitted with this application, the proposal comprises:-

- demolition of the existing metal deck roof and associated structures, demolition of the existing framed wall and obscured glazing to Middle Street, demolition of the existing masonry wall beyond, demolition of the existing concrete roof, balustrading and kitchen mechanical equipment, and demolition of the ground floor TAB, gaming lounge, back bar, kitchen, and courtyard area.
- an internal reconfiguration of part of the ground floor of the Hotel including a new gaming lounge and TAB (both to comply with the NSW smoke-free legislation), a gaming lobby, new male and female toilets, and a new accessible toilet;
- new planters along the perimeter of the gaming lounge and TAB;
- a new metal deck roof over the gaming lounge and TAB;
- a new wheelchair accessible entry and fire exit door to Middle Street;
- new façade treatment along Middle Street including new obscured glass doors to the new entry, new obscured glass windows, and a new framed parapet wall; and
- acoustic attenuation works, all to the acoustic engineer's details.

**Comments:**

*Additional information was sought and received. Upon review the following is recommended:*

**Comments:**

**Food safety** – *conditions to be recommended to ensure safe food is being prepared sold to customers*

**Acoustic** - *D04646133 - Acoustic Report for Development Application Solotel Pty Ltd Regent Hotel, dated 28 June 2021 prepared by ARUP Job Number 280210-03 has been reviewed. Conditions to ensure compliance with report and recommendations to be recommended.*

*Compliance with revised Plan of Management for the Operation of the Regent Hotel located at 416-422 Anzac Parade Kingsford (D04646134) dated July 2022 also to be recommended to be complied with via condition of consent.*

**Amenity** – *No objections are noted as being received in TRIM on 28 July 2022.*

**2.4. Senior Building Surveyor**

The application was referred to Council's Senior Building Surveyor for comment and/or recommendation who raised no objection to the proposed development, subject to standard conditions of consent.

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

**D48/22**



**CLAUSE 4.6 VARIATION REQUEST**

**RANDWICK LOCAL ENVIRONMENTAL PLAN 2012  
CLAUSE 6.19: NON-RESIDENTIAL FLOOR SPACE  
RATIOS IN KENSINGTON AND KINGSFORD TOWN  
CENTRES**

**DEVELOPMENT APPLICATION FOR ALTERATIONS  
TO PART OF THE GROUND FLOOR, INCLUDING  
PARTIAL DEMOLITION AND INTERNAL  
RECONFIGURATION TO INCLUDE A NEW GAMING  
LOUNGE AND TAB, A NEW METAL DECK ROOF  
OVER THE NEW GAMING LOUNGE AND TAB,  
WORKS TO THE MIDDLE STREET FACADE,  
DRAINAGE AND ASSOCIATED WORKS**

**REGENT HOTEL  
416-418 ANZAC PARADE, KINGSFORD**

Prepared for  
Solotel

By  
BBC Consulting Planners

Job No. 20-170  
Clause 4.6. F.doc  
October 2021

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## 1. INTRODUCTION

### 1.1 The Proposal

This Clause 4.6 variation request has been prepared in support of a DA for alterations to part of the ground floor of the Regent Hotel ("the Hotel"), including partial demolition and internal reconfiguration to include a new gaming lounge and TAB, a new metal deck roof over the new gaming lounge and TAB, works to the Middle Street façade, drainage and associated works ("the proposal") at 416-418 Anzac Parade, Kingsford ("the site"). All relevant aspects of the proposal are described and assessed in the Statement of Environmental Effects ("SEE") and its appendices.

Clause 6.19 of Randwick Local Environmental Plan 2012 ("the LEP") applies to development within the Kensington and Kingsford town centres, which includes the proposal.

Clause 6.19(2) of the LEP states:-

*"(2) Despite clause 4.4, development consent must not be granted for development on land in any area identified on the Non-Residential Floor Space Ratio Map unless the non-residential floor space ratio is at least the non-residential floor space ratio shown on the map in relation to that area."*

The site is located within "Area N" on the Non-Residential Floor Space Ratio Map (see **Figure 4F** in the SEE). The minimum non-residential FSR requirement for land in "Area N" is 1:1. This is more than the existing FSR on the site and is more than the proposed FSR of 0.756:1.

This Clause 4.6 variation request has been prepared in relation to the proposals non-compliance with the development standard in Clause 6.19(2) which requires a minimum non-residential FSR of 1:1.

### 1.2 Site, Zoning, Zone Objectives and Permissibility

The location and boundaries of the site are identified on **Figures 1 and 2** in the SEE respectively.

The immediate and wider contexts of the site are shown on **Figures 3A and 3B** in the SEE.

The site is zoned B2 Local Centre pursuant to RLEP 2012 (see **Figure 4A**), the objectives of which are as follows:-

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*





- *To maximise public transport patronage and encourage walking and cycling.*
- *To enable residential development that is well-integrated with, and supports the primary business function of, the zone.*
- *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*
- *To facilitate a safe public domain.”*

The proposal is consistent with the above objectives.

“Pubs” (as defined), are a form of “food and drink premises” which are a form of “retail premises” which are a form of “commercial premises”. “Businesses” are a type of “commercial premises”. A pub is therefore a permissible use and the proposed alterations to the Hotel are therefore permissible with consent in the B2 Local Centre zone.

### **1.3 The non-residential FSR standard in the LEP**

Clause 6.19 of the LEP establishes the minimum non-residential floor space ratio for development within the Kensington and Kingsford town centres. The identified minimum non-residential FSR for the site is 1:1. The proposal has a non-residential FSR of 0.756:1.

Clause 4.6 of the LEP allows approval to be granted to a DA, even though the proposal contravenes a development standard in the LEP, including the non-residential FSR standard in Clause 6.19.

This written request addresses the requirements of Clause 4.6 of the LEP.

### **1.4 Context**

The Hotel is located on the north-eastern corner of the intersection of Anzac Parade and Middle Street in Kingsford. The Hotel forms part of the busy and cosmopolitan Kingsford Town Centre which comprises a mixture of retail/commercial premises as well as high density residential development.

The immediate and wider context of the site is illustrated on the aerial photographs in **Figures 3A and 3B**, respectively.

### **1.5 Principles and relevant authorities**

The principles and relevant authorities which have been considered in the preparation of this Clause 4.6 variation request are those found in:-





- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827 ("Wehbe");
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ("Four2Five No 1");
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ("Four2Five No 2");
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ("Four2Five No 3");
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118;
- Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245;
- Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61;  
and
- Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.



## 2. RELEVANT DEVELOPMENT STANDARD

The relevant development standard is the non-residential FSR control in Clause 6.19(2) of the LEP which states:-

*“(2) Despite clause 4.4, development consent must not be granted for development on land in any area identified on the Non-Residential Floor Space Ratio Map unless the non-residential floor space ratio is at least the non-residential floor space ratio shown on the map in relation to that area.”*

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### 3. EXCEPTION TO DEVELOPMENT STANDARDS (CLAUSE 4.6)

Clause 4.6 of the LEP permits consent to be granted for a development application even though the development proposed in the development application would contravene a development standard imposed by the LEP.

Clause 4.6 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 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.”*

Accordingly, Clause 4.6 can be used to vary (to the extent required) the non-residential FSR standard in Clause 6.19(2) of the LEP in respect of a non-compliance with the minimum non-residential FSR standard.



#### **4. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE AND ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD?**

##### **4.1 Extent of non-compliance**

The alterations to the existing Hotel result in an FSR of 0.756:1. The existing FSR is 0.76:1. Both the existing and proposed FSR's are less than the minimum non-residential FSR requirement of 1:1 for development on the site.

##### **4.2 What is the Purpose/Object of the Standard?**

The objectives of the non-residential FSR standard are set out as follows in Clause 6.19(1) of the LEP:

*"(1) The objective of this clause is to ensure that a suitable level of non-residential floor space is provided to promote commercial and retail activity within the Kensington and Kingsford town centres."*

##### **4.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case**

###### **4.3.1 Consistency with the objectives of the non-residential FSR standard**

The proposal is consistent with the objectives of the non-residential FSR standard for the following reasons:-

- the non-residential FSR for the site remains largely unchanged (i.e. 0.76:1 to 0.756:1); and
- the proposal is for alterations to an existing Hotel which will continue to provide commercial/business activity within the Kingsford town centre.

###### **4.3.2 The extent of the non-compliance is acceptable and reasonable**

The non-compliance with the standard in Clause 6.19(2) of the LEP which applies to the site is considered to be acceptable and reasonable in the circumstances of the case for the following reasons: -

- reasons set out above in Section 4.3.1;



- Clause 6.19 is anticipating redevelopment of sites within the Kingsford Town Centre up to the maximum permissible FSR of 3:1, whereas the proposal is for alterations only to the existing Hotel.
- the proposal remains consistent with the overall planning intent for the Kingsford Town Centre;
- the public will have access to an improved, well-designed, better-equipped, well-managed licensed premises which is well-served by public transport (including the new light rail); and
- activities which commonly characterise the night-time economy will be maintained and facilitated.

#### **4.3.3 There is a lack of adverse amenity or other impacts**

There is a lack of any adverse amenity, or other impact, associated with the non-compliance with the standard.

#### **4.4 Are there sufficient environmental planning grounds to justify contravening the development standard?**

The proposal will have a positive planning outcome in that it will result in an updated, more attractive and more functional and efficient Hotel which will be a positive improvement to the streetscape of Middle Street and to the Kingsford Town Centre. It will have acceptable impacts on neighbouring properties and will provide improved amenity for patrons and staff without unreasonably affecting the amenity of the occupants of other properties in the immediate vicinity of the site.

The non-compliance which is proposed with the development standard requiring a minimum FSR of 1:1 is not significant, as the proposal (i.e. alterations to an existing hotel) will continue to provide commercial/business activity within the Kingsford town centre and will continue to positively contribute to the day-time and night time economies.

#### **4.5 Has this written request adequately addressed the matters required to be demonstrated by sub-clause 4.6(3)?**

Yes. See Section 4.1 – 4.4 above.



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**5. IS THE DEVELOPMENT IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE NON-RESIDENTIAL FSR STANDARD AND THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT?**

**5.1 Consistency with the objectives of the standard**

The proposal is consistent with the objectives of the non-residential FSR standard for the reasons set out in Section 4.3.1, and having regard to all other relevant considerations is therefore in the public interest.

**5.2 Consistency with the objectives of the zone**

The development is consistent with the objectives of the B2 Local Centre zone as set out in Section 1.2. As stated therein, the proposal is relevantly consistent with these objectives and having regard to all other relevant considerations is therefore in the public interest.



## 6. THE “FIVE PART TEST”

In addition to the above requirements, a consent authority may choose to not only use the principles of Clause 4.6 but also the “five part test” established by the Land and Environment Court.

Court cases dealing with requests to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded. The “five part test” is outlined as follows:-

- “1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.”*

In relation to test (1): the proposal meets the objectives of the non-residential FSR standard for development within the Kensington and Kingsford town centres, notwithstanding the non-compliance, as detailed above in Section 4.2.

In relation to test (2): no reliance is placed on this test.

In relation to test (3): [if strict numerical compliance was required with the non-residential FSR standard, the site would need to be redeveloped entirely. The proposal is for alterations only to the existing hotel].

In relation to test (4): no reliance is placed on this test.

In relation to test (5): no reliance is placed on this test.





## 7. CONCLUSION

It can be concluded that compliance with the non-residential FSR standard in Clause 6.19(2) of the LEP (which requires a minimum of 1:1 for the site) is unreasonable and unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds to justify the requested variation (i.e. the proposal is for alterations to an existing hotel which has an existing FSR of 0.756:1 which result in an FSR of 0.756:1), and the absence of any adverse amenity impacts) and that the proposal is in the public interest.

The proposed development will result in an updated, more attractive and more functional and efficient Hotel building which will be a positive improvement to the streetscape of Middle Street and the Kingsford Town Centre.

The proposal will also achieve amenity outcomes for the site and is in the public interest because it is nevertheless consistent with the objectives, both of the non-residential FSR standard, and of the B2 Local Centre zone in the LEP.

The Clause 4.6 variation request should therefore be supported.

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## Appendix 3: DCP Compliance Table

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

.As discussed under the Key Issues heading the proposed development is not considered to result in an intensification of use, with no increase to the number of patrons. As such, it is considered that the proposed development would not generate any additional traffic or parking demand to that which currently exists. Given that there is no on-site parking available at the subject site, nor is there any ability to incorporate any parking on site, in this instance compliance with the minimum parking requirements is not considered warranted. The subject site on Anzac Parade is serviced by good public transport, with public parking also available adjacent to the site. As such, the proposed development is not considered to result in any unreasonable traffic or parking impacts.

### 3.2 Section B9: Management Plan

A Plan of Management was provided with the application which is consistent with the provisions of Section B9 of RDCP 2013. Some minor amendments to the POM are recommended by condition as discussed within the report.

### 3.3 Section D13: Late Night Trading

The provisions of Part D13 apply to Development Applications for existing late night trading premises which seek approval for the following:

- (a) *A change of use.*
- (b) *New, modified or extended trading hours.*
- (c) *Refurbishment, additions or extensions that are likely to result in an intensification of the current use; and/or*
- (d) *An extension or renewal of trading hours or renewable conditions of consent.*

*Note: For the purposes of (c) above, an intensification of use includes:*

- *An increase in patron capacity*
- *An increase in the amount of floor area*

As discussed under the Key Issues section, the proposed development is not considered to result in an intensification of use of the premises, noting that the overall floor area of the development shall be reduced, including a reduction to the floor area for public use, and as such the provisions of Part D13 are not applicable. Notwithstanding, the proposal shall result in an increase to the "outdoor" areas, and therefore consideration has been given to the provisions of Part D13, including the aims and objectives.

The subject premises would be classified as high impact pursuant to clause 1.4 of Part D13, being a pub. The matters for consideration under Part D13 include consideration of the nature of the proposal, layout, hours of operation, current and proposed size of the premises and patron numbers, use of alcohol, noise and amenity impacts, and the suitability of the proposal with regards to surrounding land uses. Section 3 of Part D13 also requires a Management Plan to be submitted with the application in accordance with Part B9 of RDCP 2013, including details on security, management of patrons, house policy, and the outcomes of any preliminary consultation with NSW Police.

The proposed development does not seek to increase the number of patrons at the premises which is determined by the allowable capacity under the BCA. As discussed in the Key Issues section, the proposal shall result in an overall reduction to the floor area and subsequently it can be assumed that the associated number of persons permitted on the premises would be reduced as a result. The premises has been operating at the current capacity for an extended period of time with no concerns raised. The main concern with the proposed development is the new "outdoor" gaming and TAB areas and the associated impacts, with particular regards to noise, given that the areas will have louvers and therefore the noise shall not be wholly contained.

This has been considered by Council's Environmental Health Officer in the assessment of the application, and it is considered that subject to the recommendations, the proposal shall not result in any unreasonable acoustic privacy impacts upon neighbouring properties. The proposal does not seek to amend the approved hours of operation which shall be maintained. A Plan of Management for the premises has been provided in accordance with Part B9 of RDCP 2013. Furthermore, the application was referred to NSW Police for comment and/or recommendation who raised no objection to the proposed development, subject to some conditions of consent in relation to CCTV, crime scene preservation, social impact, and the requirement for a gambling incident register to be kept.

The objectives of Part D13 are as follows:

- *To protect neighbourhood amenity and property, particularly residential land uses.*
- *To minimise opportunities for anti social behaviour and crime, through the responsible management of late night trading premises and their surrounding environment.*
- *To enable local economies that provide for the community's diverse cultural, social and retail needs.*
- *To deliver certainty to applicants, operators and the local community about the planning requirements with regard to late night trading premises.*
- *To ensure a consistent approach in the assessment of DAs for late night trading premises.*

Subject to the recommended conditions of consent, it is considered that the proposed development shall not result in any unreasonable impacts upon the surrounding residential properties and neighbourhood amenity. The proposed development shall also allow the ongoing use and feasibility of the pub. Furthermore, approval of the subject application shall allow measures to be put in place with regards to the management and operation of the premises to minimise opportunities for anti-social behaviour and crime. As such, the proposed development is considered to be consistent with the objectives of Part D13 and is supported in this instance.

### 3.4 Section E6: Kensington and Kingsford Town Centres

The proposed development seeks consent for alterations and additions to the existing pub, with no changes proposed to the overall height or number of storeys and the overall built form largely retained. Furthermore, the proposal shall not alter the residential component of the existing building (being the hotel accommodation). Given the subject application does not involve a redevelopment of the site, change of use or significant alterations and additions, several provisions of Part E6 of the RDCP 2020 are not applicable. Consideration of the relevant controls have been addressed below:

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Urban Design and Place-Making</b>		
<b>2.1</b>	<b>Guiding Principals</b>		
	Development within the Kensington and Kingsford town centres must align with the following urban design and place making principles which are derived from the K2K Planning Strategy and community input: <ul style="list-style-type: none"> <li>• Provide quality affordable housing to meet local housing needs, particularly for key workers, essential workers and students</li> <li>• Reinforce boulevard character along Anzac Parade by strengthening the built form edge and adding greenery</li> <li>• Achieve a dominant typology of diverse mid-rise, mixed-use</li> </ul>	The proposed development involves alterations and additions to the existing pub to the single storey component within the eastern portion of the site. The proposed works are contained within the existing building footprint, are modest in nature and shall improve the streetscape of Middle Street and Middle Lane by upgrading a portion of the façade. The proposal shall not result in any	<b>Acceptable.</b>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>buildings throughout the town centres</p> <ul style="list-style-type: none"> <li>• Provide taller, slender landmark buildings at identified strategic node sites in conjunction with the delivery of substantial public benefits established through a design excellence process</li> <li>• Protect the heritage significance of heritage items, contributory buildings and/or heritage conservation areas located within the town centres and adjoining areas</li> <li>• Give priority to people walking, cycling and using public transport</li> <li>• Achieve a sensitive transition in relation to recently constructed development and surrounding established lower scaled residential neighbourhoods</li> <li>• Create a positive street level environment through built form that allows solar amenity, permeability and maintains human scale</li> <li>• Ensure that new infill development respects the fine-grain character of contributory buildings</li> <li>• Establish building setback controls which provide for the creation of wider footpaths and street tree planting</li> <li>• Achieve urban design, place and architectural excellence, including best practice environmental design</li> <li>• Provide active street frontages throughout the town centres</li> <li>• Encourage precinct-scale benefits across all node sites that contributes to the unique character of each town centre; and</li> <li>• Achieve innovative place-led solutions for local hydrology and resilience.</li> </ul>	<p>detrimental impacts upon the heritage significance of the adjacent heritage items and the contributory facades of the existing building shall be retained.</p> <p>The proposal is not considered to be inconsistent with the guiding principals for the K2K centres.</p>	
<b>3.</b>	<b>Desired Future Character</b>		
<b>3.1</b>	<b>Kensington and Kingsford Town Centres</b>		
<b>3.2</b>	<b>Strategic Node Sites</b>		
	Submit a statement with the DA demonstrating how the proposed design meets the desired future character of the	The subject site is identified as being a strategic node site,	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	relevant town centre and where applicable, the strategic node site based on the block controls contained in Part B.	located on the corner of Anzac Parade and Middle Street. However, the proposed development does not seek to redevelop the site with the proposal involving alterations and additions to the existing premises. No additional height or density is being sought.	
<b>5.</b>	<b>Floor Space Ratio</b>		
	<p>(a) The maximum FSR that can be achieved on a site is shown on the RLEP 2012 FSR Map. An alternative FSR is applicable in accordance with the RLEP 2012 Alternative FSR Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) In relation to the Kensington Town centre where an existing FSR Map does not apply, the Alternative FSR Map is applicable for the purposes of calculating the Community Infrastructure contribution referred to in clause (a) for any floor space above the existing height maximum control shown on the RLEP 2012 Height Map</p> <p>(c) A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p> <p>(d) Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like</p>	<p>The maximum FSR permitted on the site pursuant to the FSR Map of RLEP 2012 is 3:1.</p> <p>The total proposed FSR for the development is 1.40:1. The proposal provides a non-residential FSR of 0.756:1 which does not comply with the 1:1 minimum. See Key Issues and Clause 4.6 assessment</p>	<p><b>Complies.</b></p> <p><b>Does not comply.</b> See Key Issues and Clause 4.6 assessment for further discussion.</p>
<b>6.</b>	<b>Built Form</b>		
	<p><u>General Comments</u> As outlined previously, the proposed development does not involve a redevelopment of the subject site. The existing built form shall be largely retained with the proposed works contained within the existing building footprint. As the proposed works are primarily internal there shall be</p>		<b>N/A</b>



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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	minimal change to the external fabric of the existing building, with the eastern side of the building upgrading, with a new roof form and alterations to a portion of the elevation fronting Middle Street.		
<b>9.</b>	<b>Heritage Conservation</b>		
	<p><u>All Development</u></p> <p>(a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p> <ul style="list-style-type: none"> <li>(i) Adhere to the principles of the Burra Charter</li> <li>(ii) Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories</li> </ul> <p>(c) Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.</p> <p><u>Heritage items and contributory buildings</u></p> <p>(a) Alterations and additions to heritage items and contributory buildings should conserve original characteristic built form, and not significantly alter the appearance of principal, or historically significant facades, except to remove detracting elements</p> <p>(b) Alterations and additions to heritage items and contributory buildings should:</p>	<p>The subject site is identified as being a contributory building under the Kensington and Kingsford DCP 2020. The subject site is also located within the vicinity of a local heritage item, being O'Dea's Corner located on the corner of Anzac Parade and Middle Street at 424-436 Anzac Parade. The application was referred to Council's Heritage Planner who raised no objection to the proposal, subject to recommended conditions.</p>	<p><b>Complies.</b></p> <p><i>See Section 6.1.2 and Appendix 1 for comment.</i></p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> <li>(i) Retain, restore and reinstate (where possible) significant features and building elements to principal elevations, shop fronts and visible side elevations, including, original openings and decorative features such as original doors, windows, sun hoods, awnings, lighting and historic signage</li> <li>(ii) Remove unsympathetic alterations and additions, and building elements where possible</li> <li>(iii) Retain and encourage adaptive re-use of historic shop fronts and avoid unnecessary screening through planting, signage or other works</li> <li>(iv) Retain and conserve the form and articulation of historic street frontages (such as the first structural bay/or first room to preserve inset verandas) and avoid 'facadism'</li> <li>(v) Include a minimum 6.5m upper level setback for additions to existing contributory buildings at strategic node sites. A minimum 5.5m upper level setback applies to contributory buildings on all other sites</li> <li>(vi) Be designed to be clearly distinguishable as new work when undertaking extensions, alterations, reconstruction or repairs</li> <li>(vii) Incorporate new doors and windows which compatible with the positioning, size and proportions of original windows and doors</li> <li>(viii) Ensure that conservation works including the reinstatement and restoration of historic fabric is appropriately balanced with the impacts of larger development on the site. Restoration works should enhance the quality of finishes, form and detail</li> <li>(ix) Incorporate materials, finishes and colours which are visually</li> </ul>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>compatible with the heritage or contributory building and enhance its appearance</p> <p>(x) Ensure that new services are discretely integrated within and behind retained street frontages and not above awnings</p> <p>(xi) Introduce new signage to be set below, or no higher than street awning level. Signage above the awning detracts from the detail and quality of historic fabric.</p> <p><u>New development adjacent to heritage items and contributory buildings:</u></p> <p>(c) Development adjacent to heritage items and contributory buildings (infill development) should:</p> <p>(i) Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings</p> <p>(ii) Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage</p> <p>(iii) Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms</p> <p>(iv) Ensure new street elevations maintain the vertical articulation and segmented character if historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation</p> <p>(v) Provide contemporary new signage that compliments the character of the contributory buildings and</p> <p>(vi) Ensure that new finishes to side elevations should not detract from street front detailing and finishes.</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)						
	(d) Development should maintain and reinstate the emphasis of street corners and cross routes through reinforcement of historic height lines remaining at, and adjacent to intersections.								
10.	Block Controls								
	<u>General Comments</u> As outlined previously, the proposed development does not involve a redevelopment of the subject site. The existing built form shall be largely retained with the proposed works contained within the existing building footprint. As the proposed works are primarily internal there shall be minimal change to the external fabric of the existing building, with the eastern side of the building upgrading, with a new roof form and alterations to a portion of the elevation fronting Middle Street.  As such, the block to block built form provisions are not considered applicable in this instance.		N/A						
12.	Floor to Ceiling Heights								
	(a) Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements: <table><tr><th>Ground Floor</th><th>First Floor</th><th>Upper Floors</th></tr><tr><td>3.5m</td><td>3.3m</td><td>2.7m</td></tr></table>	Ground Floor	First Floor	Upper Floors	3.5m	3.3m	2.7m	The proposal involves internal reconfiguration of the existing premises with the proposed works generally contained within the existing building footprint. A new roof is proposed which shall retain the existing internal ceiling heights of 2.85m.	N/A
Ground Floor	First Floor	Upper Floors							
3.5m	3.3m	2.7m							
14.	Acoustic Privacy								
	<u>Commercial Uses</u> (l) The assessment for consideration of the future development within the town centre is to also consider an external noise external target of 70 dB(A) for general noise and an L10* level of 80 dB(A)/ 88 dB(C) when assessed at 1 metre from the future development, noting that future venues where entertainment is to be provided will be subject to the standard LA10 Condition in relation to the operation of those premises. (m) The site and building layout for new development in the town centre is to maximise acoustic privacy by providing adequate building separation within the development and from neighbouring buildings (refer 3.1.6: Building Separation).  <i>Note 1: The noise and vibration report prepared at the DA stage will identify a noise design base for the entire mixed</i>	The proposed development involves alterations and additions to the existing premises. There shall be no increase to the existing patron capacity and no change to the hours of operation. An Acoustic report has been provided with the application, and a detailed assessment undertaken with recommended conditions imposed where required.	Acceptable.						

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p><i>use building and would become the benchmark for subsequent acoustic assessments of that building.</i></p> <p><i>Note 2: To maintain the intent of the acoustic objectives prior to the issue of a Construction Certificate or an Occupation Certificate there will be a requirement for a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building.</i></p>		
<b>16.</b>	<b>Articulation and Modulation</b>		
	<p>(a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual depth to the façade;</p> <p>(b) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain;</p> <p>(c) Ground floor shopfronts must demonstrate 'fine grained' articulation by dividing the façade into discreet bays or sections;</p> <p>(d) Entries to business premises should be clearly defined and distinguished from entries to residential components;</p> <p>(e) Specific architectural response to articulation and modulation is to be provided at key node sites through the architectural competition process;</p> <p>(f) Building articulation should be sympathetic and complementary to the adjoining built form;</p> <p>(g) Corner buildings are to be expressed by giving visual prominence to parts of the façade (eg a change in building articulation, material or colour, roof expression or increased height). Corner buildings should be designed to add variety and interest to the street and present each frontage as a main street.</p>	<p>The proposed works relate to a minor portion of the existing façade, being the south-eastern corner of the building fronting Middle Street, and an increase to the height of the parapet wall along Middle Lane. The upgrade of the façade at this portion shall provide a more aesthetically pleasing presentation to the street, and improve the existing streetscape. The elevation shall include new obscure glazing and a new access door which shall assist in articulating the façade. There shall be no change to the remainder of the façade fronting Middle Street or on Anzac Parade.</p>	<b>Acceptable.</b>
<b>17.</b>	<b>Materials and Finishes</b>		
	<p>(a) External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject</p>	<p>A condition of consent is recommended for final colours and materials to</p>	<b>Complies, subject to condition.</b>



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>to corrosion, susceptible to degradation or high maintenance costs are to be avoided;</p> <p>(b) Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>(c) A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>(d) Design windows that can be cleaned from inside the building; and</p> <p>(e) For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.</p>	be submitted to Council for approval prior to the issue of a Construction Certificate.	
<b>19.</b>	<b>Active Street Frontages</b>		
	<p>(a) Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map</p> <p>(b) Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP c)</p> <p>(c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade</p> <p>(d) The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners</p> <p>(e) The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade</p> <p>(f) The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade</p> <p>(g) A minimum of 50% of a blank wall (larger than 10m<sup>2</sup>) visible from the public domain must incorporate greenery and/or public art</p> <p>(h) Entrances to internally oriented shopping or commercial arcades and the arcades themselves, must be a minimum of 6m wide</p> <p>(i) Solid non-transparent roller shutters are discouraged. Where security grills</p>	<p>The subject site is identified as requiring an active street frontage on the Middle Street frontage. However, the proposal does not involve the erection of a building or a change of use, with alterations and additions proposed only. As such clause 6.20 of RLEP is not considered applicable in this instance. Notwithstanding, the proposal shall maintain a commercial use at the Ground Floor level, with the frontage to Middle Street enhanced through an upgraded façade and a new accessible pedestrian entry.</p>	<b>N/A</b>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>or screens are required, they are to be installed at least 1m behind the glazing line and of lattice design with an openness to allow viewing of the interior and internal lighting to spill onto the footpath</p> <p>(j) Incorporate outdoor dining wherever possible in accordance with Part D12, Footpath Dining and Trading of DCP 2013.</p>		
<b>21.</b>	<b>Transport, Traffic, Parking &amp; Access</b>		
	<p>(a) Vehicle parking within the Kensington and Kingsford town centres is to be provided in accordance with the rates outlined in the tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7)</p> <p>(b) Where practical, parking access and/or loading is to be provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane</p> <p>(c) Basement carpark access must comply with the requirements of B8: Water Management</p> <p>(d) Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact</p> <p>(e) Parking is to be accommodated underground where possible</p> <p>(f) Sub-basement car parking is to be no more than 1.2m above existing ground level;</p> <p>(g) Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>(h) Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>(i) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <p>(i) Future travel mode share targets, specifically a reduction in car driver mode share ii)</p>	<p>The proposed development shall not result in any intensification of use. There is no parking provided on the subject site which is to be retained. See Key Issues and Part B7 of RDCP 2013 for further comment.</p>	<b>N/A</b>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(ii) Travel demand management strategies to encourage sustainable travel</p> <p>(iii) Initiatives to implement and monitor travel measures such as car share and bike share; and</p> <p>(iv) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP.</p> <p>(j) Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p> <p>(k) All DAs are to provide electric charging stations in an accessible location on site.</p> <p>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</p>		
<b>22.</b>	<b>Sustainability</b>		
	<p>(a) All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p> <p>(b) DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> <li>- Waste collection (e.g. Automated underground waste)</li> <li>- Renewable energy opportunities</li> <li>- Water harvesting and re-use</li> <li>- Vertical and Roof Greening</li> <li>- Buildings shall incorporate passive design strategies in addition to materials which have less embodied energy, reducing operational energy and focussing on on-going well being of occupants</li> </ul> <p>(c) All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP</p> <p>(d) Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m<sup>2</sup> or more must achieve a minimum NABERS 6- star Energy and NABERS 5-star or 6-star Water rating</p> <p>(e) All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided.</p>	<p>The proposed development does not involve a new development, with the proposed works considered minor in nature. As such, compliance with the design criteria is not considered warranted in this instance. Conditions of consent shall be imposed to ensure that the development is consistent with the waste management and recycling requirements.</p>	<b>Acceptable.</b>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(f) All development must address the requirements of B6 Recycling and Waste Management (g) All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste. (h) All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.		
<b>23.</b>	<b>Water Management</b>		
	(a) DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design (b) In addition to requirements of Part B8, applications for basement level/s must include: <ul style="list-style-type: none"> <li>(i) detailed designs by a qualified hydrological or structural engineer for a water-proof retention system (fully-tanked structure) with adequate provision for future fluctuations of water table variation of at least +/- 1 metre; and</li> <li>(ii) certification from a second qualified hydrological engineer experienced in the design of structures below a water table that the design of the groundwater management system will not have any adverse effects on surrounding property or infrastructure.</li> </ul>	The proposal does not include any new basement levels or amendments to the existing basement. Stormwater management shall be addressed through appropriate conditions of consent.	<b>Acceptable.</b>
<b>25.</b>	<b>Night Time Economy</b>		
	(a) DAs for night time trading will be assessed in accordance with Part B9 of DCP 2013 (b) DAs for mixed use/residential buildings must have regard to the late night trading character of the Kensington and Kingsford town centres by incorporating suitable noise attenuation measures for the residential component of the building as specified under section 14 of this part of the DCP	The proposal does not involve any changes to the approved hours of operation. See assessment under Section B9 and D13 regarding late night trading.	<b>Acceptable.</b>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(c) DAs must incorporate CPTED principles into the design of public realm for night time activation, safety and security</p> <p>(d) Proposals shall include details of creative lighting to be used to improve the visual amenity of buildings at night</p> <p>(e) DAs for late night operations must include measures for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises</p> <p>(f) DAs should consider night time activation measures during construction such as creative lighting, attractive hoardings, pop ups and other temporary activations.</p>		

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**Responsible officer:** Angela Manahan, Executive Planner

**File Reference:** DA/620/2021

D48/22



## Development Consent Conditions



<b>Folder /DA No:</b>	DA/620/2021
<b>Property:</b>	416-422 Anzac Parade, Kingsford NSW
<b>Proposal:</b>	Alterations and additions to the ground floor of the Regent Hotel including demolition and reconfiguration works, addition of a new outdoor gaming lounge and TAB with roof, works to the Middle St façade, landscaping, and associated works (variation to FSR of the RLEP 2012).
<b>Recommendation:</b>	Approval

### 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>
DA1-0501 (Site Plan), Revision 01	H&E Architects	26 February 2021	08 October 2021
DA1-1000 (Ground Floor Plan – Existing & Proposed), Revision 01	H&E Architects	26 February 2021	08 October 2021
DA1-1100 (Roof Plan – Existing & Proposed), Revision 01	H&E Architects	26 February 2021	08 October 2021
DA1-3000 (East & West Elevation – Existing & Proposed), Revision 01	H&E Architects	26 February 2021	08 October 2021
DA1-3001 (South Elevation – Existing & Proposed), Revision 01	H&E Architects	26 February 2021	08 October 2021
DA1-4000 (Section 01 – Existing & Proposed), Revision 01	H&E Architects	26 February 2021	08 October 2021
DA1-4001 (Section 02 – Existing & Proposed), Revision 01	H&E Architects	26 February 2021	08 October 2021

### Amendment of Plans & Documentation

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

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- (a) The Plan of Management, dated July 2022 shall be amended as follows:
- (i) Part 3, Point 3. is to amend the Sunday hours of operation to 12:00 noon - 10:00pm;
  - (ii) The capacity of the beer garden (as approved under development consent DA/778/2006) is to be included in the POM as follows:

The maximum number of patrons permitted in the beer garden is as follows:

- 6:00am to 12:00am (midnight): Sixty (60) patrons
- 12:00am (midnight) to 2:00am: Thirty (30) patrons
- 2:00am to 6:00am: Twenty (20) patrons.

The updated POM is to be submitted to the Principal Certifier demonstrating compliance with the above prior to the issue of a Construction Certificate.

#### **Heritage Conservation**

3. In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken and the NSW Heritage Office notified under the requirements of the Heritage Act.

#### **NSW Police Operational Conditions** **CCTV**

4. The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
- (a) The system must record continuously from opening time until one hour after the premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),
  - (b) Recordings must be in digital format and at a minimum of ten (10) frames per second,
  - (c) Any recorded image must specify the time and date of the recorded image,
  - (d) The system's cameras must cover the following areas:
    - (i) all entry and exit points on the premises,
    - (ii) the footpath immediately adjacent to the premises, and
    - (iii) all publicly accessible areas (other than toilets) within the premises.
5. The licensee must also:
- (a) Keep all recordings made by the CCTV system for at least 30 days,
  - (b) ensure that the CCTV system is accessible at all times the system is required to operate pursuant to sub-clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and
  - (c) provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.

#### **Crime Scene Preservation**

6. Immediately after the person in charge of the licensed premises or a staff member becomes aware of any incident involving an act of violence causing injury to a person on the premises, the person in charge of the licensed premises and/or staff member must:
- (a) take all practical steps to preserve and keep intact the area where the act of violence occurred,
  - (b) retain all material and implements associated with the act of violence in accordance with the crime scene preservation guidelines issued by NSW Police, as published from time to time on the Liquor and Gaming NSW website,
  - (c) make direct and personal contact with NSW Police to advise it of the incident, and
  - (d) comply with any directions given by NSW Police to preserve or keep intact the area where the violence occurred.
  - (e) In this condition, 'staff member' means any person employed by, or acting on behalf of, the licensee of the premises, and includes any person who is employed to carry on security activities (eg. crowd controller or bouncer) on or about the premises.

#### **Social Impact**

7. The business authorised by this licence must not operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be

expected from the information contained in the Community Impact Statement, application and other information submitted in the process of obtaining the licence.

#### **Gambling Incident Register**

8. The licensee must keep and maintain a gambling incident register.
9. The gambling incident register must record:
  - (a) any incident in which a patron of the venue displays or engages in problematic gambling behaviour of the kind specified in the 'Signs of risky and problem gambling behaviour: Know the signs and how to act' factsheet published on the L&GNSW website as amended from time to time.
  - (b) the time, location and machine number(s) and brief description (or identity, if known) of any gaming machine player identified displaying or engaging in that behaviour
  - (c) any proposed or implemented self or third-party exclusions of gaming machine players (specifying the player's name (where provided or known), membership number (if applicable) and duration of any exclusion) and the patron's response to the same.
  - (d) Any breach or attempted breach of a self or third party exclusion
10. The gambling incident register must also record details of the action taken in response to the incidents, applications and other matters recorded in the register.
11. The licensee must review the gambling incident register at least on a monthly basis and must consider whether an exclusion order is appropriate for any person who has been asked to self-exclude but has declined to do so.
12. The information recorded in a gambling incident register must be retained for at least 3 years from when the record was made.
13. The licensee must, at the request of a police officer or L&GNSW inspector, make any gambling incident register available for inspection.

#### **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**

14. 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**

15. The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures, including details of the proposed paint scheme, are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

#### **Heritage Conservation**

16. A salvage plan shall be prepared and submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.

17. Details of external elements of the proposed mechanical ventilation systems, including layout and dimensions of ductwork, are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

**Kensington and Kingsford Town Centres Section 7.12 Development Contributions**

18. In accordance with Council's Development Contributions Plan effective from 10 December 2019, based on the development cost of \$1,116,640.00 the following applicable monetary levy must be paid to Council: \$27,916.00.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment.

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

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

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**

19. A development compliance and enforcement fee of \$2,344.95 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**

20. 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**

21. 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 of the *Environmental Planning and Assessment Act 1979*:

- \$5,000.00 - 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

22. 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

23. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA). Details of compliance are to be provided in the construction certificate.
24. All new building work (including alterations, additions, fit-out work and fire safety works are to be carried out in accordance with the relevant provisions of the Building Code of Australia (BCA) and details are to be included in the Construction Certificate, to the satisfaction of the Certifying Authority.
25. The owner must comply with the requirements of the BCA Assessment Report, prepared by Concise Certification, dated 10 August 2021 (Project No 200435), or any subsequent BCA Compliance Report.

#### Access & Facilities

26. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifier.

**Design Alignment Levels**

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

- **Match the back of the existing footpath in Middle Street along the full Middle Street site frontage.**

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

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

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6924.

28. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of \$176.00. This amount is to be paid prior to a construction certificate being issued for the development.

**Stormwater Management**

29. Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the certifying authority prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the certifying authority. The drawings and details shall include the following information:

- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
- b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
- c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
  - i. Roof areas
  - ii. Paved areas
  - iii. Grassed areas
  - iv. Garden areas
- e) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
- f) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
- g) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.

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



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

#### **Acoustic Amenity**

31. Noise emissions from the use and operation of the development and all plant and equipment must satisfy the relevant noise criteria in the *Protection of the Environment Operations Act 1997*, the EPA Noise Policy for Industry and details to demonstrate compliance with the relevant noise criteria shall be provided by a suitably qualified acoustic consultant and be included in the construction certificate.

#### **Food Premises associated with the development**

32. The premises is to be designed, constructed and operated in accordance with the *Food Act 2003*, *Food Regulation 2015*, Australia & New Zealand Food Standards Code and Australian Standard AS 4674 (2004), Design, construction and fit-out of food premises and details of compliance are to be included in the documentation for the construction certificate.

#### **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**

33. 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*;
  - c) 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
  - d) at least two days notice must be given to the Council, in writing, prior to commencing any works.

#### **Dilapidation Reports**

34. A dilapidation report (incorporating photographs of relevant buildings) must be obtained from a *Professional Engineer*, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier*.

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 Site Management Plan**

35. 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 Plan**

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

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

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

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

**Construction Noise & Vibration Management Plan**

37. 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 provisions of the *Protection of the Environment Operations Act 1997* 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 & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority (EPA) Guidelines for Construction Noise and Assessing Vibration, and DECC Construction Noise Guideline, prepared by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course

of construction, to the satisfaction of the Council. A copy of the plan must be provided to the Council and Principal Certifying Authority prior to the commencement of site works.

**Public Liability**

38. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

**Public Utilities**

39. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
40. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

**Construction Traffic Management**

41. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Middle Street for the duration of the demolition & construction works.

The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.

42. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site
- Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)

- Any activities proposed to be located or impact upon Council's road, footways or any public place
- Measures to maintain public safety and convenience

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

43. Any necessary approvals must be obtained from NSW Police, Transport for NSW – RMS and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

**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**

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

**Building & Demolition Work Requirements**

45. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Protection of Environment Operations (Waste) Regulation 2014;
- Randwick City Council Asbestos Policy.

*A copy of Council's Asbestos Policy is available on Council's web site or a copy can be obtained from Council's Customer Service Centre.*

**Removal of Asbestos Materials**

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

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifier and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.

- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2014*. Details of the disposal of materials containing asbestos (including receipts) must be provided to the Principal Certifier and Council.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

A copy of Council's Asbestos Policy is available on Council's web site at [www.randwick.nsw.gov.au](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**

47. 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.

Retaining walls, shoring, or piling must be designed and installed in accordance with appropriate professional standards and the relevant requirements of the Building Code of Australia and Australian Standards. Details of proposed retaining walls, shoring or piling are to be submitted to and approved by the Principal Certifier for the development prior to commencing such excavations or works.

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

48. 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.

#### **Sediment & Erosion Control**

49. 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 must be included in the Construction Site Management Plan and a copy must 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.

#### **Dust Control**

50. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

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

*Dust control measures and practices may include:-*

- ☐ *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- ☐ *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- ☐ *Installation of a water sprinkling system or provision hoses or the like.*
- ☐ *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- ☐ *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- ☐ *Landscaping and revegetation of disturbed areas.*

**Temporary Site Fencing**

51. Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding (having a minimum height of 1.5m) is to be provided to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. If necessary, an overhead (B Class type) hoarding may be required to protect the public or occupants of the adjoining premises from falling articles or materials.

*If it is proposed to locate any site fencing, hoardings or items upon any part of the footpath, nature strip or any public place, a Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services department beforehand. Details and plans are to be submitted with the application, together with payment of the weekly charge in accordance with Council's adopted Pricing Policy.*

**Public Safety & Site Management**

52. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time, and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
- b) 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.
- c) 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.*

- d) During demolition and construction, sediment laden stormwater run-off shall be controlled using the sediment control measures outlined in the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details of the proposed sediment control measures are to be detailed in the *site management plan* which must be submitted to the Principal Certifying Authority and Council prior to the commencement of any site works. The sediment and erosion control measures must be implemented prior to the commencement of any site works and be maintained throughout construction. A copy of the plan is to be maintained on-site and be made available to Council officers upon request.



- e) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- f) Bulk bins/waste containers 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 application must be submitted to and be approved by 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.

All works within or upon the road reserve, footpath, nature strip or other public place are to be completed to the satisfaction of Council, prior to the issuing of an occupation certificate for the development. For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 9399 0999.

#### Site Signage

53. 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

54. 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 3.00pm only</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development	<ul style="list-style-type: none"> <li>Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - 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.

**Survey Requirements**

55. 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 footings and boundary retaining structures,
- prior to construction (pouring of concrete) of each 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**

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

**Road/Asset Opening Permit**

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

- a) A *Road / Asset Opening Permit* must be obtained from Council prior to 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.
- b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
- c) Relevant *Road / Asset Opening Permit* fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
- d) The owner/developer must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* or occupation of the development (whichever is sooner).
- e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
- f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
- g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
- h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
- i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.

- j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.

The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

#### **Traffic Management**

58. 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.
59. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.
60. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

#### **REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

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

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

#### **Occupation Certificate Requirements**

61. 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*.

An Occupation Certificate must not be issued for the development if the development is inconsistent with the development consent. The requirements of the *Environmental Planning & Assessment Act 1979* and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

#### **Fire Safety Certificates**

62. Prior to issuing an interim or Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire and Rescue NSW.

#### **Structural Certification**

63. A Certificate must be obtained from a *professional engineer*, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council with the Occupation Certificate.

#### **Noise Emissions - Certification**

64. Where plant and equipment is installed in the premises (e.g. air-conditioners, mechanical ventilation/exhaust systems or refrigeration motors etc), a written report or statement must be obtained from a suitably qualified and experienced consultant in acoustics.

The report/statement must demonstrate and confirm that noise and vibration from the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Office of Environment & Heritage/Environment Protection Authority Noise Control Manual & Industrial Noise Policy, Council's conditions of consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources and a copy of the report/statement must be provided to Council prior to the issue of an occupation certificate.

**Sydney Water Certification**

65. A section 73 Compliance Certificate, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

Please make early contact with the Water Servicing Co-ordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.

**Noise Control Requirements & Certification**

66. The use of the development and the operation of plant and equipment must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

The operation of the plant and equipment shall not give rise to an  $L_{Aeq, 15 \text{ min}}$  sound pressure level at any affected premises that exceeds the background  $L_{A90, 15 \text{ min}}$  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.

67. A report or correspondence must be obtained from a qualified Acoustic Consultant if new plant and equipment is installed to the building which is located within 15m of a dwelling.

The report/correspondence is required to demonstrate that noise emissions satisfy the relevant noise criteria specified in Council's conditions of consent and the NSW Environment Protection Authority (EPA) Industrial Noise Policy.

**Waste Management**

68. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.

Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.

The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.

69. Any liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department (i.e. via a grease trap) and details of compliance are to be submitted to the Certifier prior to the commencement of any works.

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

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

71. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
  - b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
  - c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

**Service Authorities****Sydney Water**

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

Go to [sydneywater.com.au/section73](http://sydneywater.com.au/section73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifying Authority and the Council prior to issuing an Occupation Certificate.

**Stormwater Drainage**

73. The applicant shall submit to the Principal Certifying Authority (PCA) and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the PCA.

**Acoustic Amenity**

74. A report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority Noise Policy for Industry 2017 and conditions of this development consent (including any relevant approved acoustic report and recommendations submitted with this application), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources.

**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.

**Fire Safety Statements**

75. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council (at least on an annual basis) in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a competent fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

**Operation of the Premises**

76. The use of the premises must continue to operate in accordance with the development consents issued previously for the use of this site. No changes are approved to the operation of the premises, including patrons numbers or hours of operation under this development consent (with the exception of the outdoor gaming and TAB areas).

**Environmental Amenity**

77. The use and operation of the premises shall not give rise to an environmental health or public nuisance, cause a vibration nuisance or, result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations.
78. The proposed use and operation of the premises (including all plant and equipment) must 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 premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background ( $L_{A90}$ , 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an  $L_{Aeq}$ , 15 min and adjusted in accordance with the NSW Office of Environment & Heritage/Environment Protection Authority Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

79. Noise and vibration from the use and operation of the development (including all plant and equipment) must comply with the following requirements:
1. Noise from the development must not cause an 'offensive noise', as defined in the *Protection of the Environment Operations Act 1997*.
  2. The development shall be implemented in accordance with the recommendations and requirements contained in the acoustic report submitted with this application (except as modified by the conditions of this consent).
  3. Prior to the issue of an Occupation Certificate, a report confirming compliance with the specified noise limits referred to above and the noise design base for the development is to be obtained from an acoustic consultant and be submitted to Council and the Principal Certifier.
  4. The acoustic assessments shall be prepared having regard to the NSW Environmental Protection Authority's Noise Policy for Industry, the DECC (EPA) Assessing Vibration, a Technical Guideline, and relevant Australian Standards pertaining to noise measurements and the noise conditions identified above.
  5. Speakers and/or noise amplification equipment must not be installed or played in any outdoor areas or directed towards outdoor areas.
80. An acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, may be requested by an authorised officer of the Council and must be provided to the Council **as may be required from time to time after the issuing of an occupation certificate**, which demonstrates and confirms that the relevant provisions of the *Protection of the*



*Environment Operations Act 1997* and the noise criteria and requirements contained in this consent has been satisfied (including any relevant adopted acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.

81. The  $L_{10}$  noise level emitted from the licensed premises shall not exceed the background noise level ( $L_{90}$ ) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.
- The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level ( $L_{A90}$ ) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12.00 midnight and 7.00am at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 7.00am.

82. The operator of the business must establish and maintain a formal and documented system for the recording and resolution of complaints made to the premises by residents. All complaints are to be attended to in a courteous and efficient manner and referred promptly to the manager (or other nominated position). The appropriate remedial action, where possible, is to be implemented immediately and the Manager (or nominated position) shall contact the complainant within 48 hours to confirm details of action taken. The Complaints register shall be made available to Council officers and Police upon request.
83. The Plan of Management for the Operation of The Regent Hotel located at 416-422 Anzac Parade Kingsford dated July 2022 as submitted with this application (and as required to be updated with this development consent) must be complied with at all times.

In this regard the TAB area is restricted to a maximum of 20 patrons and the Gaming Room is restricted to a maximum of 65 patrons at any one time.

Any modifications, alterations or amendments to this Plan of Management may only be made with the written approval of the Manager of Development Assessments from the Randwick City Council.

84. The use and operation of food premises must comply with the *Food Act 2003*, *Food Regulation 2015*, *Food Standards Code* and Food Safety Standards at all times, including the requirements and provisions relating to:
- Food handling – skills, knowledge and controls.
  - Health and hygiene requirements.
  - Requirements for food handlers and businesses.
  - Cleaning, sanitising and maintenance.
  - Design and construction of food premises, fixtures, fitting and equipment.

A failure to comply with the relevant food safety requirements is an offence and may result in legal proceedings, service of notices and/or the issuing of on-the-spot penalty infringement notices.

85. The food premises must be kept in a clean and sanitary condition at all times, including all walls, floors, ceilings, fixtures, fittings, appliances, equipment, fridges, freezers, cool rooms, shelving, cupboards, furniture, crockery, utensils, storage containers, waste bins, light fittings, mechanical ventilation and exhaust systems and ducting, storage areas, toilet facilities, basins and sinks
86. All food preparation, cooking, display and storage activities must only be carried out within the approved food premises.

Storage shall be within appropriate shelves, off the floor and in approved storage containers. External areas or structures must not be used for the storage, preparation or cooking of food,

unless otherwise approved by Council in writing and subject to any necessary further approvals.

87. Waste storage areas must be maintained in a clean and safe condition and waste bins must not be left-out on Council's Road, footpath or nature strip – other than for collection purposes and for a maximum period of 24 hours (unless approved otherwise by Council).

**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 \$6,000) 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 All new building work (including alterations, additions and building renovations) must comply with the Building Code of Australia (BCA) and relevant Australian Standards and details of compliance must be provided in the Construction Certificate application.

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

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

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

- A5 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

- A6 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

- A7 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.

A8 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.

A9 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).

A10 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 any adjoining land.

Finished ground levels external to the building are to 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.

A11 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.

A12 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.

A13 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

A14 A separate development application and construction certificate or a complying development certificate (as applicable) must be obtained if the premises is to be used for any of the purposes detailed below unless the proposed development and fit-out is encompassed in this consent:

- ☐ All food businesses (including premises used for the sale, storage, preparation and distribution of food and drinks)
- ☐ Hairdressing salons, Beauty salons, Businesses involving Skin Penetration & Piercing, Massage businesses
- ☐ Licensed premises, places of public entertainment and hotels
- ☐ Places of Shared Accommodation (including Boarding / Lodging Houses, Bed & Breakfast businesses, Backpackers, Residential Hotels or the like)
- ☐ Cooling Towers or Warm Water Systems
- ☐ External plant and equipment not encompassed in the consent
- ☐ Business providing any form of sexual service (i.e. brothel or the like).

Business premises which are used for any of these purposes must comply with relevant public health and safety legislation and requirements and they must be registered with Council prior to an Occupation Certificate being issued for the development. The relevant registration and inspection fee is also required to be paid to Council in accordance with Council's adopted Pricing Policy.

- A15 The applicant/owner is advised to engage the services of a suitably qualified and experienced Acoustic consultant, prior to finalising the design and construction of the development, to ensure that the relevant noise criteria and conditions of consent can be fully satisfied.
- A16 Any 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.
- A17 Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.
- A18 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- A19 Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.

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## Development Application Report No. D49/22

**Subject:** 96 Tunstall Avenue, Kingsford (DA/508/2018/A)

### Executive Summary

**Proposal:** Section 4.55 (2) Modification seeking retrospective approval for increased lower ground and ground floor levels by 100mm and 450mm, amended openings, relocated pool pump, reconfigured internal layouts and access entry, first floor level reconfigured floor area and altered roof profile.

**Ward:** West Ward

**Applicant:** Apto & Best Architects

**Owner:** Mr T Yiu and Mrs D Yiu

**Cost of works:** \$2,602,080

**Reason for referral:** Original development application was determined by the Panel

### Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/508/2018/A for Section 4.55 (2) Modification seeking increased lower ground and ground floor levels by 100mm and 450mm, amended openings, relocated pool pump, reconfigured internal layouts and access entry, first floor level reconfigured floor area and altered roof profile, at No. 96 Tunstall Avenue, KINGSFORD NSW 2032, in the following manner:

- Amend Condition 1 to read:**

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp:

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received Council</b>	<b>by</b>
Site Plan A104 Revision 2	Aetch Design	14 March 2019	15 March 2019	
Lower Ground Floor Plan A105 Revision 2	Aetch Design	14 March 2019	15 March 2019	
Entry Floor Plan A106 Revision 2	Aetch Design	14 March 2019	15 March 2019	
First Floor Plan A107 Revision 2	Aetch Design	14 March 2019	15 March 2019	
FSR Diagrams A108 Revision 2	Aetch Design	14 March 2019	15 March 2019	
Site Diagrams Elevation A109 Revision 2	Aetch Design	14 March 2019	15 March 2019	
East Elevation A201	Aetch Design	14 March 2019	15 March 2019	

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Revision 2			
West Elevation A202 Revision 2	Aetch Design	14 March 2019	15 March 2019
North Elevation A203 Revision 2	Aetch Design	14 March 2019	15 March 2019
South Elevation A204 Revision 2	Aetch Design	14 March 2019	15 March 2019
Street Elevations A205 Revision 2	Aetch Design	14 March 2019	15 March 2019
West (rear) A205 Revision 2	Aetch Design	14 March 2019	15 March 2019
A301 Section A-A Revision 2	Aetch Design	14 March 2019	15 March 2019
A302 Section B & C Revision 2	Aetch Design	14 March 2019	15 March 2019
A303 Section D – D Revision 2	Aetch Design	14 March 2019	15 March 2019
A501 Materials Schedule Revision 2	Aetch Design	14 March 2019	15 March 2019

<b>BASIX Certificate No.</b>	<b>Dated</b>
947075S	15 August 2018

**EXCEPT where amended by:**

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

Plan	Drawn by	Dated
A100 Rev 1	Aetch design	12/10/20
A104 Rev 1	Aetch design	12/10/20
A105 Rev 1	Aetch design	12/10/20
A106 Rev 1	Aetch design	12/10/20
A107 Rev 1	Aetch design	12/10/20
A108 Rev 1	Aetch design	12/10/20
A109 Rev 1	Aetch design	12/10/20
A201 Rev 1	Aetch design	12/10/20
A202 Rev 1	Aetch design	12/10/20
A203 Rev 1	Aetch design	12/10/20
A204 Rev 1	Aetch design	12/10/20
A301 Rev 1	Aetch design	12/10/20
A302 Rev 1	Aetch design	12/10/20
A304 Rev 1	Aetch design	12/10/20
A501 Rev 1	Aetch design	12/10/20

<b>BASIX Certificate No.</b>	<b>Dated</b>
1326340S	29 July 2022

- Amend the following conditions:

- 2.b. The wire mesh screen along the southern edge of the rear ground level deck adjoining the living room shall be deleted and replaced with a 1.6m high privacy screen.

The privacy screen must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable).
- Fixed lattice/slats with individual openings not more than 30mm wide.
- Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

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

- living room window (1.06) on southern elevation at lower ground floor

- 2.f. Fences located on the side boundaries of the site shall not exceed a maximum height of 1.8 m measured above finished ground levels, except for the southern boundary adjoining the turf area at the rear which is limited to a maximum RL30.34 to enable a 1.8m high side boundary fence above finished ground level. On sloping sites or in changes at ground levels, the maximum height of the fence may exceed the aforementioned specified height by up to 150 mm maximum adjacent to any required 'step downs' or changes in ground level. See also condition 2h.

- **Add the following conditions:**

- 2.h. The southern side mesh and concrete stairs located along the southern side passageway shall be relocated 2.8m to the east such that the location and levels are generally consistent with the location and level of the existing stairs. See also condition 2f restricting the height of the side boundary fence to 1.8m above finished ground levels.

- **Delete the following conditions:**

- Condition 2.a
- Condition 2.e
- Condition 2.g

**Attachment/s:**

Nil

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### 1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) as a discretionary referral to avoid any conflict of interest associated with the applicant's architect being a relative of a Council employee. The original DA was determined by the RLPP for the same reason.

### 2. Site Description and Locality

The site is located on the western side of Tunstall Avenue, between Goodrich and Tresidder Avenues, Kingsford. The site is legally described as Lot 32 in DP 27867. An oblique view of the site and the approved development is shown in image below.





Oblique view of subject site and adjoining sites.

The site is rectangular in shape with a frontage width of approximately 17m and a depth of approximately 36m, providing a total site area of 613 m<sup>2</sup>.

The site slopes down from the street to the rear boundary, representing a change in level of approximately 6-7 m.

The adjoining properties to the north side (at bottom of the oblique image) at 94 Tunstall Avenue and to the south (at top in the oblique image) at 98 Tunstall Avenue contain a 1-3 storey dwelling houses with swimming pools in the rear yard. The rear boundary adjoins The Australian Golf Course. An aerial view of the subject site (bounded in green) and surrounding area is shown in image below.

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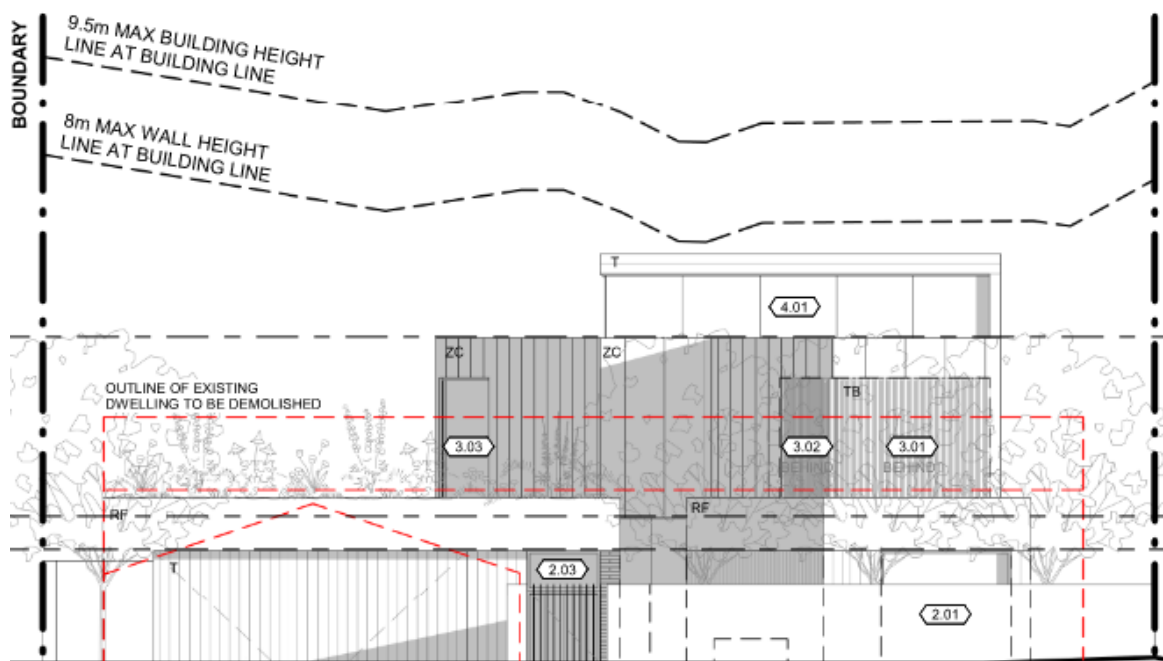
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Aerial view of subject site and surrounding development

### 3. Details of Current Approval

The original development application was determined by the Randwick Local Planning Panel on 9 May 2019 for demolition of all structures on site and construction of a new part 2 and part 3 storey dwelling house with double garage, rear swimming pool, associated site, and landscaping works.



Street view of approved development





GFA plan of approved development

The development consent contained the following non-standard conditions 2a to 2g relating to the following:

- a. Entry level privacy screening: A 1.6m high privacy screen at southern side of entry level deck adjoining the laundry.
- b. Ground level rear deck: Replacement of a ground level bench (1.75m<sup>2</sup>) on the southern edge of the deck adjoining the living area with deep soil landscape and a 1.6m high privacy screen on the inside face of the external on the southern elevation.
- c. Privacy treatment to windows: Additional privacy measures were required to the following windows:
  - 1<sup>st</sup> floor north facing bedroom 4 window (3.08)
  - Lower ground level south facing living room window (1.08)
  - Entry floor level west facing bedroom 3 window (2.09)
- d. Landscape to be consistent with the amended plans showing also:
  - Screen planting, including tree/plant species and mature heights within:
    - The landscape planter setback along the southern boundary adjoining the turf area and
    - The landscape planter setback along the northern boundary between the outdoor deck and BBQ area and
  - Section plans with existing ground/pool levels of the adjoining properties.
- e. Front fence (forward of building line) design requirements to be maximum height of 1.2m and be designed so the upper two thirds of the fence (excluding any piers or posts) are at least 50% open.
- f. Side boundary fencing height requirements limiting to 1.8m maximum height measured above existing ground levels (allowing 150mm extra for step downs), except for the southern boundary adjoining the turf area at the rear. Alternatively separate development consent must be obtained for alternative side and rear boundary fencing.
- g. Deletion of the sink in the upper level living room.

#### 4. Proposal

The proposed modification application seeks the following:

1. Modifications the applicant states to satisfy existing conditions (see key issues section for explanation of specific changes sought):



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- Full-height timber batten screen provided to the laundry deck, satisfying Condition No. 2a.
  - Bench adjoining the living area replaced by a full-height privacy screen with climbing plants, to satisfy Condition No. 2.b, noting that no additional deep soil is provided as required by the condition.
  - Full-height timber batten screen added to the rear (western) window of Bedroom 3, to satisfy
  - Condition No. 2.c; and
  - Top-floor sink deleted, satisfying Condition No. 2.g.
2. Refinement of internal and external elements at all levels resulting in a slight increase in GFA remaining compliant with the development standard including the following modifications at each level:
- a. Lower Ground Floor (Figure 2 in the applicants SEE shows the approved and proposed layout)
- Level changes:
    - Increased by 450mm partial subfloor rumpus level, from RL 28.69 to RL 29.14
    - Increased by 600mm northern side planter bed level from RL 28.89 to RL 29.59 (remains below the indicated land level of 94 Tunstall Avenue).
    - Increased by 150mm living area and adjoining deck by 150mm, from RL 28.54 to RL 28.69.
  - Decks:
    - Replace north-eastern rumpus deck with grassed yard
    - Replace turf adjacent to rumpus with increased landscaped garden area (RL 29.59).
    - New deck in part of central void
    - Reshaped rear west facing decks
  - Deleted:
    - Study and storage rooms at south-eastern side.
    - Toilet at north-western corner inclusive of relocated pool pump)
  - Pool pump room relocated to the northern side boundary with a wall height of between 1.52m and 1.58m above the indicated neighbour's land level.
  - Windows:
    - Deleted:
      - North facing rumpus room window (1.15)
      - North facing living room window (1.09)
      - South facing living room window (1.07)
    - Reduced/amended:
      - South facing rumpus window (1.01).
      - South facing living room low-lying window (1.06) changed from floor-to-ceiling height window (1.08)
      - South facing kitchen window (1.11 approved) reconfigured into 1.09 (south facing), 1.10 (south facing highlight) and 1.11 (west facing).
    - Added:
      - East facing living room window (1.05)
- b. Ground (Entry) Floor
- Level changes:
    - Level of the entry area increased by 450mm, from RL 32.19 to RL 32.64, matching the approved garage level

- Remaining floor level increased by 100mm, from RL 32.19 to RL 32.29.

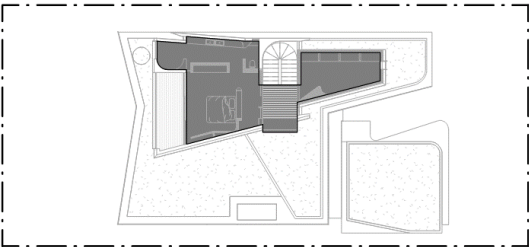
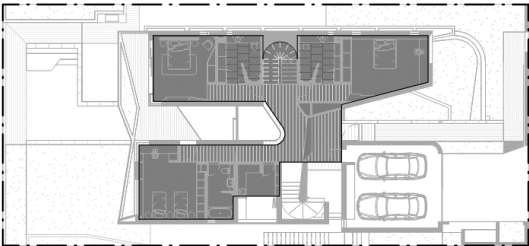
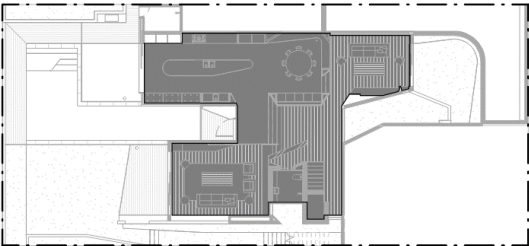
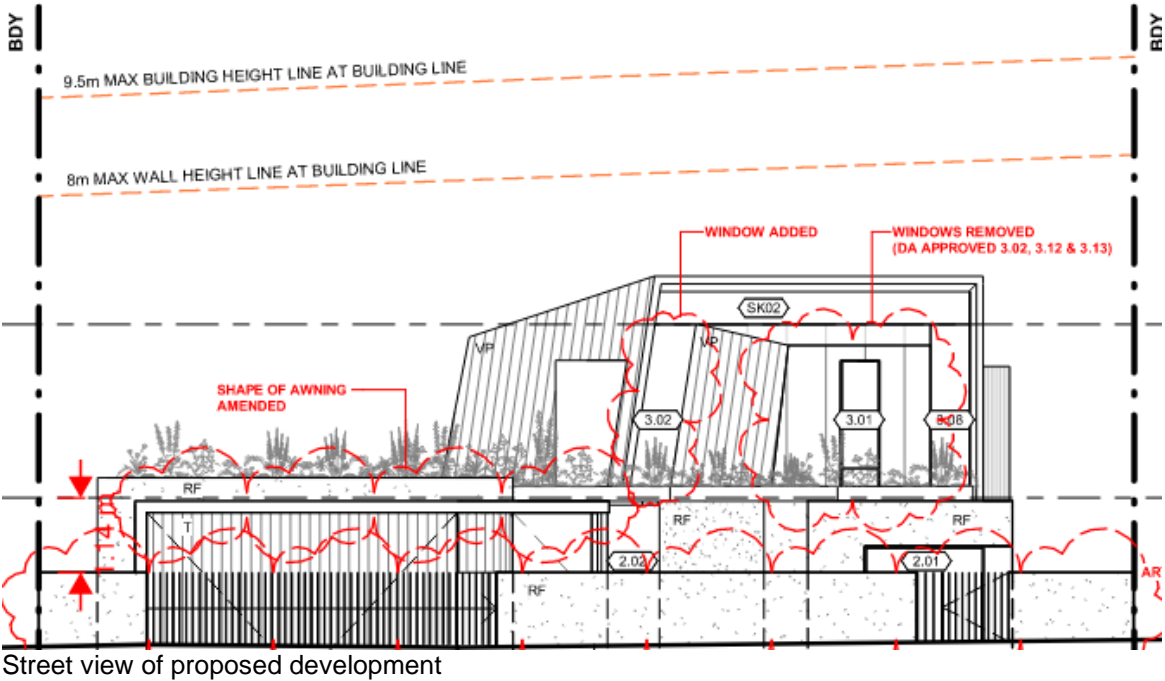
Note: The parapet height only increases by 50mm whereby the above changes are enclosed within a 50mm increased in parapet height (from RL 35.39 to RL 35.44).

- Windows:
  - Add narrow north facing window to Bedroom 1.
  - Delete the following windows:
    - South facing Bedrooms 1 and 2 windows.
    - South facing stairwell window
    - Three (3) Void windows.
  - Reduce size and relocation of the following windows:
    - North facing to the ensuite windows to bedroom 1 and 2
    - South facing bathroom window to bedroom 3
- Other external changes:
  - Remove step in northern wall of the stairwell and ensuite bathroom to align with the rest of the northern side wall resulting in a 19.75m long building length (1.86m side setback); and
  - Rear facade articulation revised to include a planter in the reshaped deck (bed 2) and new deck at western end of void).

c. First floor (top level)

- Level changes
  - Increased by 50mm, from RL 35.39 to RL 35.44.
- Windows
  - Northern and southern side windows deleted from the approved bathroom, which is reconfigured into a walk-in-wardrobe.
  - Ensuite bathroom relocated to have a northern blade wall including a recessed western window, replacing the approved northern window.
  - Northern side window deleted from the stairwell.
  - Eastern window added to the stair foyer.
  - Full-height timber batten screen added to the enlarged rear deck.
- External
  - Reshape the garage awning; and
  - Roof profile revised to include a skylight addition to the ensuite bathroom, within the approved compliant height

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PLANNING COMPLIANCE TABLE			
SITE AREA: 613.4m²			
RANDWICK LOCAL ENVIRONMENTAL PLAN 2012			
Clause	Description	Control	Proposed
4.4	Floor space ratio	0.6:1 (368.04m²)	LG: 161m² GP: 146m² FF: 60m² Total: 367m² FSR: 0.59:1
RANDWICK DEVELOPMENT CONTROL PLAN 2013			
2.3	Site Coverage	45% (276.03m²)	37% (232m²)
2.4	Landscaping and Permeable Surfaces	35% (214.69m²)	35% (216m²)
2.5	Private Open Space	8m x 8m	11.495m x 7.0m

GFA plan of S4.55 modification application

5. Section 4.55(2) Assessment

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with: -

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

3. it has notified the application & considered any submissions made concerning the proposed modification

An assessment against the above criteria is provided below:

### **1. *Substantially the Same Development***

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development.

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

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

### **3. *Notification and Consideration of Submissions:***

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

## **6. Key Issues**

The assessment is carried out against the following aspects of the S4.55 modification application:

1. Specific modifications to the conditions
2. Modifications relating to the finement of the proposal and

### **1. Specific modifications to the conditions**

An assessment is carried out against the proposed modifications as they relate to each of the non-standard conditions 2. a. to 2. b. imposed on the original approval as follows:

- a. Entry level privacy screening: Condition 2a required a 1.6m high privacy screen at southern side of entry level deck adjoining the laundry.

Assessment comment: Condition 2a is recommended to be deleted as the S4.55 plans are considered to comply with this condition of consent, showing privacy screens to the southern end of a reconfigured wider deck.

- b. Ground level rear deck: Condition 2b required the replacement of a ground level bench (1.75m<sup>2</sup>) on the southern edge of the deck adjoining the living area with deep soil landscape and a 1.6m high privacy screen on the inside face of the external on the southern elevation.

Assessment comment: The S4.55 plans don't comply with this condition, in that rather than showing deep soil in this location, they show an extension of the deck, reduced opening width and a wire mesh screen for climbing plants to provide for privacy protection of southern neighbours opposite at No. 98 Tunstall Avenue. The deck is also shown at RL28.69 which is 150mm higher than the approved level of RL28.54.

The use of mesh metal screen and climber plants is not considered to satisfy the intent of the condition noting that details have not been provided for the aperture of the mesh screens and inadequacy of the use of landscaping as a primary privacy measure. In addition, the S4.55 plans don't show this area being replaced with deep soil; however, it is not considered warranted on the basis that the proposal already complies with the DCP deep soil control.

Therefore, Condition 2b is recommended to be amended deleting the wire mesh screen and in place requiring a 1.6m high privacy screen along the southern edge of the rear ground level deck adjoining the living room.

- c. Privacy treatment to windows: Additional privacy measures were required to the following windows:

• ~~1<sup>st</sup> floor north facing bedroom 4 window (3.08)~~

Assessment comment: The first-floor layout is amended removing this window (W3.08) therefore this bullet point may be deleted.

- Lower ground level south facing living room window (1.08)

Assessment comment: This part of the condition is retained in part due to the increased width of this window (1.08) with the only modification being to the window reference number which is changed from 1.08 to 1.06.

• ~~Entry floor level west facing bedroom 3 window (2.09)~~

Assessment comment: This bullet point of the condition may be deleted as the S4.55 application reconfigures the rear western elevation providing a blade wall extending further to the rear of the bedroom 3 window line (now referenced as 2.06) which to a certain extent restricts sightlines towards the southern neighbours pool area satisfying the intent of the condition. In addition, a full height privacy screen is shown across the face of bedroom 3 window further improving neighbours privacy.

- d. Landscape to be consistent with the amended plans showing also:

- Screen planting, including tree/plant species and mature heights within:
  - The landscape planter setback along the southern boundary adjoining the turf area and
  - The landscape planter setback along the northern boundary between the outdoor deck and BBQ area and
- Section plans with existing ground/pool levels of the adjoining properties.

Assessment comment: Condition 2d shall remain as the S4.55 application does not include amended landscape plans.

- e. Front fence (forward of building line) design requirements to be maximum height of 1.2m and be designed so the upper two thirds of the fence (excluding any piers or posts) are at least 50% open.

Assessment comment: An assessment is carried out against the following specified parts of the front fence:

- i. Front fencing along street frontage:

Assessment comment: This part of condition 2e is recommended to be deleted as the S4.55 plans show partial solid and open style fencing at the front elevation to a height of between 1.04m and 1.14m above the footpath level whilst inconsistent with specified height and conditions design criteria, it is however considered acceptable in terms of the streetscape character of front fencing.

- ii. Front fencing at side boundaries:

Assessment comment: The s4.55 plans show amended side front fencing, located forward of the front building line, and an assessment is carried out as follows:

- Northern side alongside 94 Tunstall Avenue: fencing details provided in the S4.55 application show that they will be lower than the existing fence along

this boundary (shown in the north elevation plan) and measures between 1.09m to 1.61m below the top of the fence along the front street boundary. Condition 2e is considered to not have any work to do with regards the northern side front fencing.

- Southern side alongside 98 Tunstall Avenue: The S4.55 plans show reduced heights of the southern side boundary walls associated with a planter and bins area above neighbours ground level which are below that permitted in the condition of consent. In any event, the fence heights above the indicated neighbours ground level, are reduced, the planter wall is reduced from 1.17m down to 1.12m and the bin wall is reduced from 1.68m down to 0.78m.

Given the above assessment, condition 2e may be deleted.

- f. Condition 2f limits height of side boundary fencing height to 1.8m maximum height measured above existing ground levels (allowing 150mm extra for step downs), except for the southern boundary adjoining the turf area at the rear. Alternatively separate development consent must be obtained for alternative side and rear boundary fencing.

Assessment comment: Condition requires the side boundary fence to be maximum of 1.8m or effectively 1.95m for differences in ground level, (excluding the southern side boundary at the rear adjoining the turf area).

Northern side boundary fence:

This condition isn't considered necessary for the northern side fencing given that the neighbours land level at No. 94 Tunstall Street is predominately higher than that of the approved finished levels. The part of the condition 2f refencing northern side boundary fencing may be deleted.

Southern side boundary fence:

Condition 2f excludes the restriction on the height of the side boundary fence to the southern side boundary adjoining the proposed rear turf area (RL28.54) due to the already lower land level of neighbouring properties pool deck level (RL27.59) where a 2.6m high fence, measured from the neighbours land level, already exists along this part of the shared boundary. However, the proposed modification application seeks a fence to RL30.49 resulting in a 1.95m fence above the finished ground level. A fence of this height is considered unnecessary and results in a 2.9m high fence when viewed from the neighbours pool deck level. As such, condition 2f relating to southern side boundary fencing is recommended to be amended to restrict the height of the side boundary fence alongside the southern side of the rear turf area to maximum RL30.34 to enable a 1.8m high side boundary fence above finished ground level.

See also key issues section relating to modifications to the southern side passageway which are sought to be altered as part of this modification application.

- g. Deletion of the sink in the upper level living room.

Assessment comment: Condition 2g is recommended to be deleted as the modification application does not provide for a living room in the upper level.

2. Modifications relating to the refinement of the proposal are noted with Assessment comments following:

- a. Lower Ground Floor (Figure 2 in the applicants SEE shows the approved and proposed layout)
- Level changes:



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- Increased by 450mm partial subfloor rumpus level, from RL 28.69 to RL 29.14
- Increased by 600mm northern side planter bed level from RL 28.89 to RL 29.59 (remains below the indicated land level of 94 Tunstall Avenue).
- Increased by 150mm living area and adjoining deck by 150mm, from RL 28.54 to RL 28.69.

Assessment comment: No objection to the proposed change in levels as it is of a minor nature and not considered to result in any appreciable adverse impacts on the overall height or built form that would detract from the developments setting within the street and nor does it result in any significant adverse impacts on the amenity of neighbouring properties with regards to views, overshadowing, privacy, or visual bulk.

- Decks:
  - Replace north-eastern rumpus deck with grassed yard
  - Replace turf adjacent to rumpus with increased landscaped garden area (RL 29.59).
  - New deck in part of central void
  - Reshaped rear west facing decks

Assessment comment: No objections to the modified deck, replacement of hard surface area with turfed deep soil area and reshaped deck.

- Deleted:
  - Study and storage rooms at south-eastern side.
  - Toilet at north-western corner inclusive of relocated pool pump)

Assessment comment: No objections.

- Pool pump room relocated to the northern side boundary with a wall height of between 1.52m and 1.58m above the indicated neighbour's land level.

Assessment comment: No objections to the proposed relocation of the pool pump and equipment within an enclosed structure along the northern side boundary as it has a built form that's not dissimilar to the height of a standard boundary fence ensuring adequate visual bulk for neighbours and in relation to acoustic amenity, originally imposed conditions of consent seek to ensure the neighbours acoustic amenity is appropriately protected.

- Windows:
  - Deleted:
    - North facing rumpus room window (1.15)
    - North facing living room window (1.09)
    - South facing living room window (1.07)

Assessment comment: No objections to the deleted windows.

- Reduced/amended:
  - South facing rumpus window (1.01).
  - South facing living room low-lying window (1.06) changed from floor-to-ceiling height window (1.08)
  - South facing kitchen window (1.11 approved) reconfigured into 1.09 (south facing), 1.10 (south facing highlight) and 1.11 (west facing).

Assessment comment: The modifications to these windows are assessed as follows:

- No objection to the lower ground level south facing rumpus window (1.01) as it essentially faces an internal landscaped garden area which is well away from the southern boundary and narrower than that approved.
- No objection to the proposed change to the south facing living room low-lying window (1.06), changed from approved floor-to-ceiling height window (1.08), despite the increased level from RL28.99 to RL29.14 noting that the fence shown to RL30.49 will provide for an effective 1.64m sill height for the window which is below the bottom sill of the neighbour's window opposite (RL30.95).
- No objection to the modifications to the south facing kitchen window (1.11 approved) reconfigured into 1.09 (south facing), 1.10 (south facing highlight) and 1.11 (west facing) as these windows face the centre of the site and don't have an outlook that causes any significant privacy impacts on neighbours.

○ Added:

- East facing living room window (1.05)

Assessment comment: No objection to this new window as there's no sensitive direct line of sight towards the neighbours.

b. Ground (Entry) Floor

• Level changes:

- Southern side passageway modifications to levels and location of stairs

Assessment comment: The modifications along the southern side passageway seek higher land levels than that of the neighbouring property at No. 98 Tunstall Avenue which potentially results in either an inordinately high side boundary fence or allows for unobstructed sightline into the neighbour's window/s. As such, it is recommended that a condition (2h) be added requiring the stairs (both concrete and steel mesh stairs) leading from the eastern end to be shifted of the steel mesh stairs to be shifted 2.8m to the east such that levels are generally consistent with the existing stair location and level allowing for a standard 1.8m high side boundary fence (see condition 2f).

- Level of the entry area increased by 450mm, from RL 32.19 to RL 32.64, matching the approved garage level

Assessment comment: No objections to the level change.

- Remaining floor level increased by 100mm, from RL 32.19 to RL 32.29.

Assessment comment: No objection to the level increase noting that the parapet height only increases by 50mm whereby the above changes are enclosed within a 50mm increased parapet height (from RL 35.39 to RL 35.44) which continues to comply with the maximum external wall height control in the DCP.

• Windows:

- Add narrow north facing window to Bedroom 1.

Assessment comment: No objection on privacy grounds as it is narrow window and associated with a low use room.

- Delete the following windows:
  - South facing Bedrooms 1 and 2 windows.

- South facing stairwell window
- Three (3) Void windows.

Assessment comment: No objections to the deleted windows.

- Reduce size and relocation of the following windows:
  - North facing to the ensuite windows to bedroom 1 and 2
  - South facing bathroom window to bedroom 3

Assessment comment: No objections to these modifications as they are narrow windows and associated with low use rooms that will contain their own privacy measures.

- Other external changes:
  - Remove step in northern wall of the stairwell and ensuite bathroom to align with the rest of the northern side wall resulting in a 19.75m long building length (1.86m side setback); and
  - Rear facade articulation revised to include a planter in the reshaped deck (bed 2) and new deck at western end of void).

Assessment comment: The proposed building depth of 19.75m along the northern elevation is greater than the DCP control (iii) for building design control:

*iii) Divide side elevations into sections, bays, or modules of not more than 12m in length, separated by measures, such as recesses or side courtyards, in order to avoid massive or unrelieved walls.*

The associated objectives are:

- *To ensure the form, scale, massing, and proportions of dwellings recognise and adapt to the characteristics of a site in terms of topography, configuration, orientation and surrounding natural and built context.*
- *To ensure building facades are articulated to complement or enhance the existing streetscape and neighbourhood character.*
- *To encourage contemporary and innovative designs to establish a preferred neighbourhood character in new and transitional residential areas*

Having regard to the objectives, it is considered that the objectives are satisfied for the following reasons:

- The proposal maintains a mix of materials, and fenestration that break up the building mass.
- The fall from street level down to the rear means that the ground level whilst a 2<sup>nd</sup> storey within the site still presents as a single storey scale when viewed from the higher street level.
- The proposed massing is also minimised by continuing to provide 1860mm side setback which is larger than 1200mm minimum side setback control that applies under the DCP.
- No objections to the modified articulation to the rear facade to include a planter in the reshaped deck (bed 2) and new deck at western end of void).

#### c. First floor (top level)

- Level changes
  - Increased by 50mm, from RL 35.39 to RL 35.44.

Assessment comment: No objections to the change in parapet level as it remains well low the maximum external wall height control applicable to the site.

- Windows
  - Northern and southern side windows deleted from the approved bathroom, which is reconfigured into a walk-in-wardrobe.
  - Ensuite bathroom relocated to have a northern blade wall including a recessed western window, replacing the approved northern window.
  - Northern side window deleted from the stairwell.
  - Eastern window added to the stair foyer.
  - Full-height timber batten screen added to the enlarged rear deck.

Assessment comment: No objections to the above proposed modifications.

- External
  - Reshape the garage awning; and
  - Roof profile revised to include a skylight addition to the ensuite bathroom, within the approved compliant height
  - Change in distribution of floor area associated with:
    - Entry level:
      - Increased width of bedroom 1 entry level south within the site.
      - Removed stepped in element along the northern side elevation
    - First floor plan:
      - Pop out window for ensuite to bedroom 4 along the northern elevation and
      - Extending at the rear along the northern side including new shaped bedroom 4.

Assessment comment: No objections to the above proposed modifications noting that the development remains compliant with the maximum height of buildings development standard in the LEP, and the first-floor plan remains designed as a pavilion type roof form subservient in form and area to the level below. The first-floor level is also sited away from the southern side boundary to minimise adverse impacts on the neighbours in relation to visual bulk, overshadowing and sited away from the eastern front building line remaining behind a planter and articulated at street level.

## 7. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p><b>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</b></p> <p>Clause 37(4) of the EP &amp; A Regulation requires that a new BASIX certificate be lodged for amended plans or where a section 4.55 modification makes a material change to the BASIX commitments as originally approved.</p> <p>The applicant has submitted a new BASIX certificate (No. 1326340S, dated 29 July 2022). The plans have been checked with regard to this new certificate and they are consistent with the requirements</p>

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Section 4.15 'Matters for Consideration'	Comments
	<p>indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p><b>Randwick Local Environmental Plan 2012</b></p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012, the objectives of the FSR standard, and the zone.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social, or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions 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.

## 8. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.

- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- 

**Responsible officer:** Louis Coorey, Senior Environmental Planning Officer

**File Reference:** DA/508/2018/A

D49/22





## Development Application Report No. D50/22

**Subject:** 50-54 Carrington Road, Randwick (DA/4/2022)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing mixed-use building including use of part of ground floor level as a physio clinic with associated alterations, partial demolition, ground and first floor extensions to the rear with associated works.
<b>Ward:</b>	North Ward
<b>Applicant:</b>	Applicant - Andrew Spaile & Assoc Pty Ltd
<b>Owner:</b>	The Owners - Strata Plan No. 13485
<b>Cost of works:</b>	\$253,000
<b>Reason for referral:</b>	The development contravenes the floor space ratio development standard by more than 10%

### Recommendation

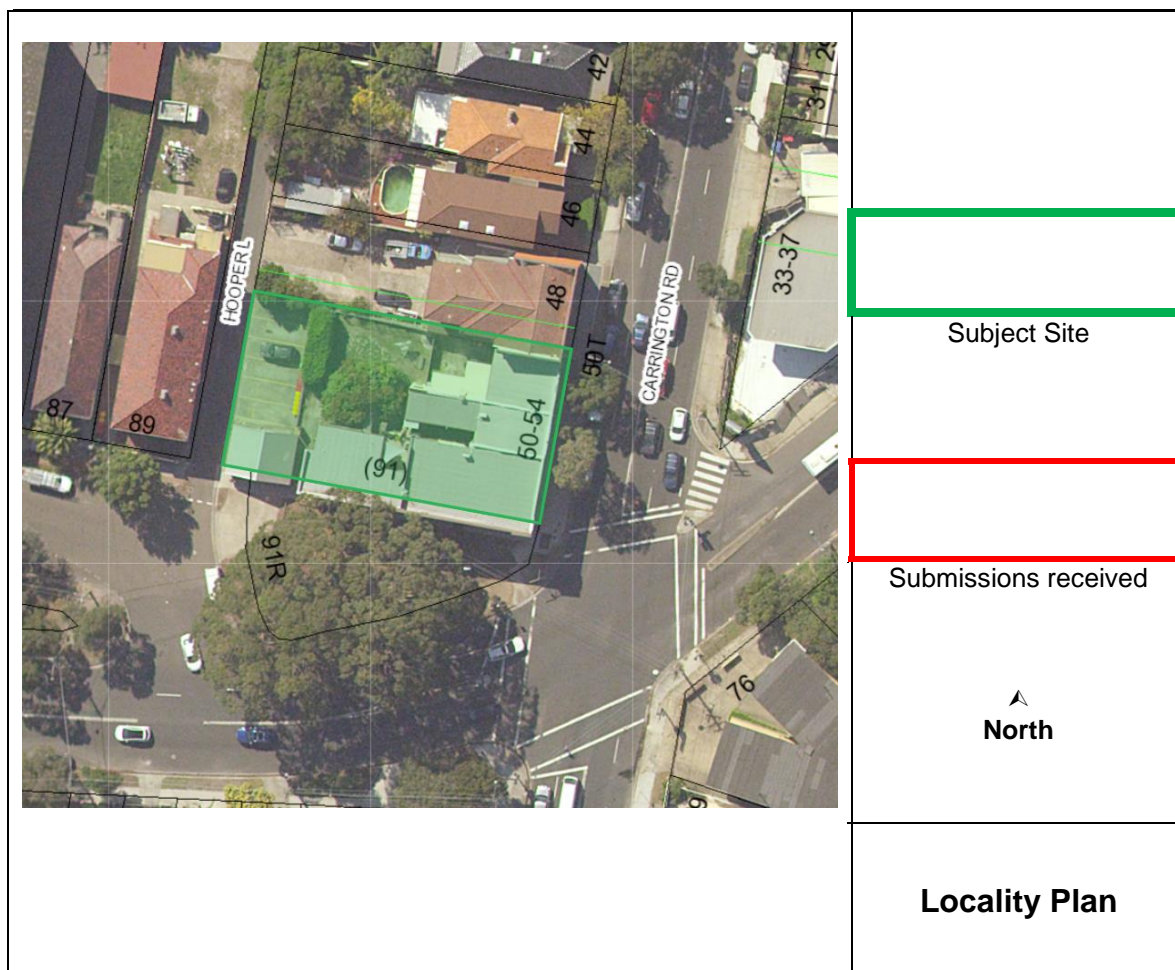
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local 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/4/2022 for alterations and additions to existing mixed-use building including use of part of ground floor as a physio clinic with associated alterations, partial demolition, and ground and first floor extension to the rear and associated works, at No. 50-54 Carrington Road, Randwick NSW 2031 subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/4/2022 - Shop 50, 50-54 Carrington Road, RANDWICK NSW 2031

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## 1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%.

The proposal seeks development consent for alterations and additions to existing mixed-use building including part use of the ground floor as a physio clinic with associated alterations, partial demolition, and ground and first floor extension to the rear and associated works.

The key issue associated with the proposal relate to the floor space ratio exceedance of 23%.

The proposed development is considered to be acceptable and is recommended for approval subject to conditions.

## 2. Site Description and Locality

The site is identified as LOTS 1-2 DP 907049 (BEING LOTS 1-18 IN SP 13485), No. 50-54 Carrington Road, RANDWICK NSW 2031. The site is zoned R3 Medium Density Residential and is located on the corner of Carrington Road to the east and Frenchmans Road to the south.

The site is a rectangular shaped allotment with a 21.335m eastern frontage to Carrington Road, a 38.175m side northern boundary, a 38.175m side southern boundary, and a 21.335m rear western boundary. The total site area is 815sqm.

Existing on site is a mixed-use building containing commercial premises on the frontage of the ground floor and a row of attached dwellings on the first floors. Also existing on site is an outdoor courtyard area within Lot 7 (the subject lot), a row of off-street parking to Hooper Lane, and a single garage accessible from Guilderthorpe Avenue.



**Figure 1. Front facing (eastern) facade of subject site - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031**



**Figure 2. Rear facing (western) facade of subject site - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031**

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**Figure 3 Rear facing (western) facade of subject site - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031**



**Figure 4 Rear facing (western) facade of subject site - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031**

### 3. Relevant history

#### DA/151/1984

- Council records indicate, the latest use of the subject allotment was for the teaching of hobby ceramics, approved on 28 June 1984.
- The proposal involved a change of use of the existing commercial premises for the teaching of hobby ceramics.

### 4. Proposal

Specifically, the subject proposal seeks development consent for the following:

#### Commercial portion (Ground Floor)

- Internal alterations to accompany the change of use to a business premise (physiotherapy clinic/studio):
  - New concrete floor slab to lowered level and ramp for level access from the street.
  - Disabled toilet.
- Change of use from a business premise (hobby ceramics) to a business premise (physiotherapy clinic/studio). Details of the proposed use are as follows:
  - Monday to Friday: 7am to 7pm
  - Saturday: 7am to 1pm
  - Sunday: Closed
  - Staff and patron numbers will range from 2 - 5 people.
  - Gym exercise equipment will be utilised.
- There are no changes proposed to the leasable area for the business premise.

#### Residential portion

- Internal alterations to create a toilet, a laundry area, a family/dining area, and a kitchen on the ground floor.
- Internal alterations and addition first floor to create three bedrooms, and ensuite, and a bathroom.
- There are no changes to the existing number of bedrooms (3).

#### Amendments

- Amended plans were received on 14 July 2022. The amendments were made as per the recommendations outlined by a submitted BCA Report prepared by Roy Mock on 7 July 2022. The changes include:
  - Increasing the side northern setback of the first floor addition to 3m.
  - Changing the front ramp entrance to comply with Australian Standard requirements.
  - Note fire-rated walls to bathrooms.
  - Specify on the ground floor plan fire-rated level requirements between clinic/studio and residential portion on the ground floor.
  - Specify on the north elevation plan fire-rated level requirements between the ground floor ceiling and the first floor finished level.
- The amended plans were not required to be notified as it results in a reduced impact to neighbouring dwellings, and annotations to comply with NCC/AS.



## Plans

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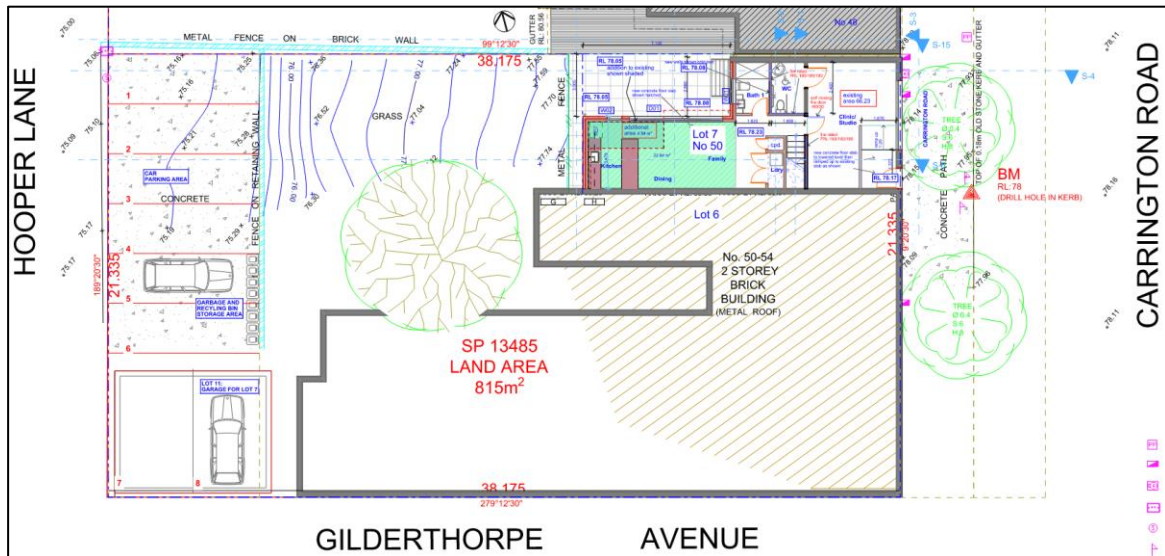


Figure 5. Site Plan - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031

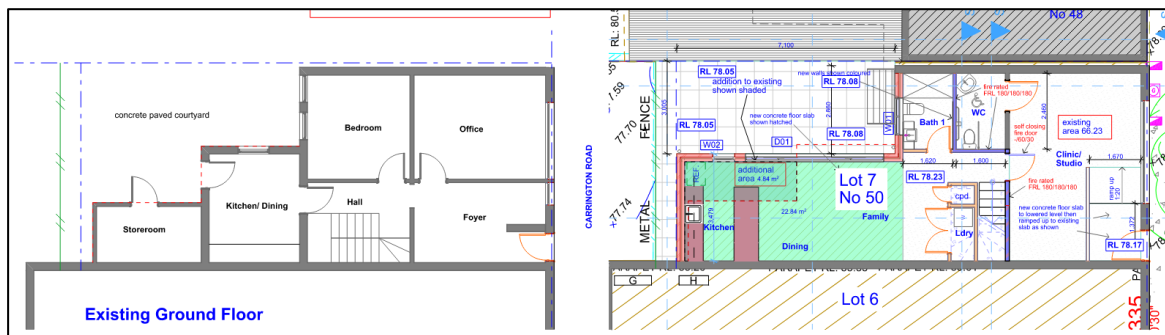


Figure 6. Existing and Proposed Ground Floor Plan - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031

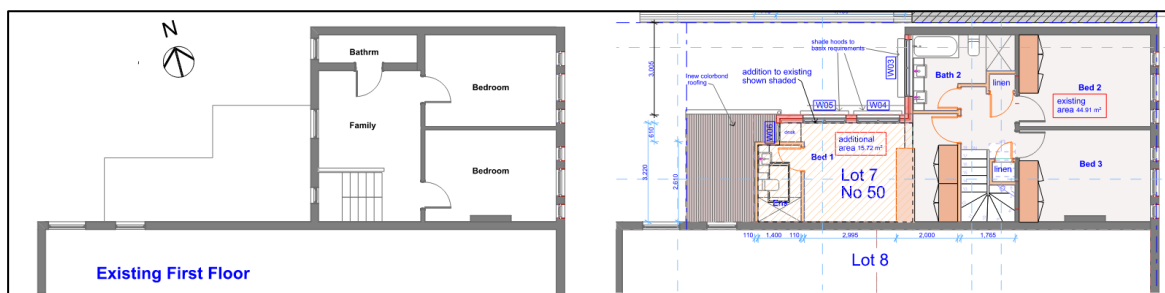
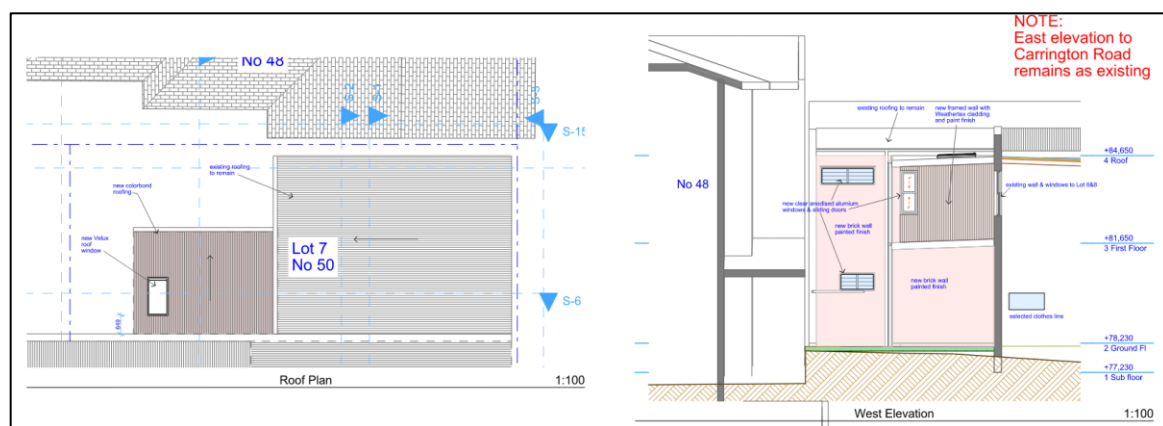
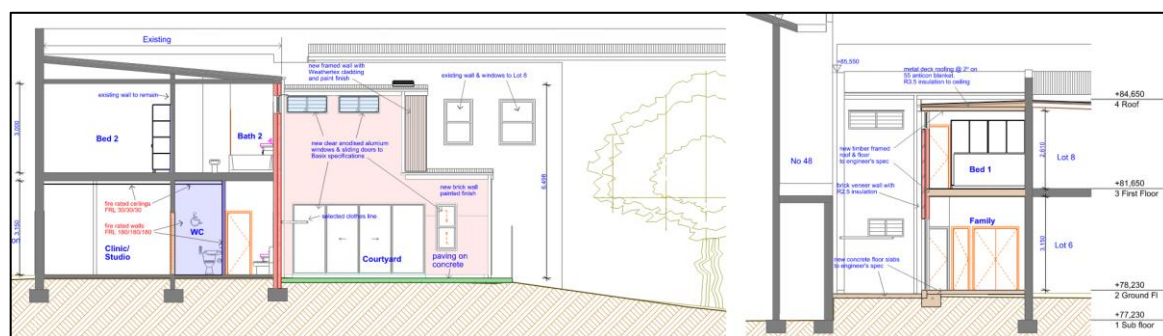


Figure 7. Existing and Proposed First Floor Plan - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031



**Figure 8. Roof plan and West Elevation - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031**



**Figure 9. North Elevation and Section - DA/4/2022 - 50-54 Carrington Road, Randwick NSW 2031**

## 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 for or against the proposed works.

## 6. Relevant Environment Planning Instruments

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The proposed development is a 'BASIX affected development' as defined under Clause 3 of the Environmental Planning and Assessment Regulation 2000.

The subject Development Application is accompanied by BASIX Certificate No. A445126\_02 issued on Friday, 24, December 2021. The certificate demonstrates that the proposal will achieve compliance with the BASIX water, energy, and thermal efficiency targets.

The BASIX related annotations and details on the submitted plans have been checked. They are consistent with the related commitments indicated on the submitted BASIX Certificate for the Development Application stage.

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

The site is zoned R3 Medium Density Residential under the Randwick Local Environmental Plan 2012, and the proposal is permissible with consent. The existing building on-site is a mixed-use development as defined under the LEP:

**Mixed use development** means a building or place comprising two or more different land uses.

The proposal is consistent with the objectives of the zone in that the proposed activity will:

- Continue to provide for the housing needs of the community within a medium density residential environment;
- Enable the use of the ground floor to continue as a business premise (physiotherapy clinic) which provides services to meet the day to day needs of residents;
- Continues to enable small-scale business use in an existing commercial building;
- No external works are being proposed to the street facing façade of the building. The alterations and additions to the residential portion of the works are located to the rear of the dwelling. It is considered that the works maintains the desirable elements of the existing streetscape and built form; and
- Maintains and protects the acoustic amenity, visual privacy amenity and solar access amenity of residents. See detailed assessment in DCP Compliance Table below.

Furthermore, the objective in Clause 6.13(1) of the RLEP are met in that the proposed activity will:

- Provide for the continued operation of small-scale business development in residential zones;
- Enable the use of existing commercial buildings for business premises in a residential zone.

Pursuant to Clause 6.13 (3) of the RLEP, Council considers that:

- The development will improve the amenity of any residential component of the development with the internal alterations and first floor addition;
- The intensity of the development is suitable for the building; and
- The degree of modification of the footprint is consistent with the scale and desired attributes of surrounding development.

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

Clause	Development Standard	Proposal	Compliance
CI 4.4: Floor space ratio (max)	0.9:1	Existing = 1.10:1 Proposed = 1.13:1	Non-compliant
CI 4.3: Building height (max)	12m	8.31m	Compliant

#### 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 (%)
CI 4.4: Floor space ratio (max)	Site Area = 815sqm Permissible = 0.9:1 (733.5sqm)	Proposed = 1.13:1 (923sqm)	Variation = 189.5sqm	Variation % = 25.8%

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 2**.

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

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

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

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



The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed works do not affect the size, scale, or aesthetic of the existing building façade facing Carrington Road or Guildershorpe Avenue. The scale of the proposal is less than the neighbouring dwelling to the north, as well as the remainder of the buildings on this site. The proposal is located in the corner of the site which is not visible from neighbouring streets, and only marginally visible from a portion of Hooper Lane to the rear.

- (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 proposal is similarly articulated to the existing building. The first floor addition at the rear elevates the residential portion of the structure out of the overshadowing of the northern neighbour to allow for a portion of northern sun to enter the premise. Additionally, the first floor addition allows for the viable installation of a solar powered hot water system and photovoltaic panels in the future.

The BASIX certificate, Certificate No. A445126\_02 issued on Friday, 24, December 2021 (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. 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 visual bulk of the proposal is significantly less bulky than that of the neighbouring dwellings. Further, privacy to neighbouring property have been maintained by ensuring all windows facing neighbouring dwellings have 2.0m height sills and obscured glazing. Overshadowing has been demonstrated to be satisfactory due to the siting of the proposal to the south of the neighbouring site, as well as limiting the height of the proposed additions to a height lower than that of the party wall on the south side to the neighbouring lots. Views are not affected with the proposal not being within the sight lines of any dwellings.

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

The existing residence has 3 bedrooms and minimal amenities in an area of 75sqm. The single bathroom is a shared facility with the commercial space and not suitable for disabled use. The increase of the dwelling to 101sqm updates the amenity to a reasonable size and includes the addition of a separate, disabled accessible toilet facility to the commercial space.

The FSR exceedance results mainly from the unique allotment characteristic in that the portion of the lot being altered makes up only a small portion of the entire lot. As the remainder of the built structures have to also be calculated within the FSR, the exceedance is not unreasonable and not unexpected.



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 R3 Medium Density Residential zone is provided below:

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

For the reasons outlined in the applicant's written request, the development is consistent with the objectives of the FSR standard.

***Assessment against objectives of R3 Medium Density Residential zone***

The objectives of R3 Medium Density Residential zone are:

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

Assessing officer's comment:

The proposed development will provide:

- For the housing needs of the community within a medium density residential environment with the three bedrooms;
- Enable other land uses that provide facilities or services to meet the day to day needs of residents (business premise);
- Recognises and maintains the desirable elements of the existing streetscape and built form;
- Protects the amenity of the residents; and
- Enables small-scale business uses in existing commercial buildings.

The development is consistent with the objectives of the floor space ratio standard and R3 Medium 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 3**.

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues above.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3/4 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 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

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Section 4.15 'Matters for Consideration'	Comments
	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	There were no submissions raised for or against the proposed development.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 10. Conclusion

That the application for alterations and additions to existing mixed-use building including use of part of ground floor as a physio clinic with associated alterations, partial demolition, and ground and first floor extension to the rear and associated works be approved (subject to conditions) for the following reasons:

1. The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
2. The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community within a medium density residential environment and enable other land uses that provide facilities or services to meet the day to day needs of residents.
3. The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

## **Appendix 1: Referrals**

### **1. Internal Referral comments:**

#### **1.1. Health, Building and Regulatory Services**

*The author of the BCA compliance report, Roy Mock, has outlined the relevant clauses of the Building Code of Australia for the proposed mixed use development. In each BCA clause, the report provided generic comments such as "the details demonstrating compliance within this clause must be incorporated into the construction certificate plans/specifications."*

*The report's author stated that he has summarised the identified non-compliance issues and offers specific recommendations to overcome the DTS non-compliances, but we were unable to find such recommendations in the Executive summary.*

*Council can advise the applicant to update the plan with below recommendations for separation of the SOU's as required by BCA clause C2.8 & C2.9*

- The proposed class 6 (clinic/studio) and class 2 residential parts located alongside one another in the ground floor and need to be fire separated and required FRL 180/180/180. However, the plan may only mention the fire rated wall instead of highlighting the required FRL.*
- The part of class 4 residential area is situated above the class 6 part and must be fire separated. BCA requires the floor separating from the adjoining parts needs to be any of the following: i) a floor/ceiling system incorporating a ceiling which has a resistance to the incipient spread of fire to the space above itself of not less than 60 minutes; or ii) have an FRL of at least 30/30/30; or iii) have a fire-protective covering on the underside of the floor, including beams incorporated in it, if the floor is combustible or of metal.*

*Please note that the section/elevation may only mention the fire separation as per BCA volume 1, specification C1.1, instead of providing details.*

*In our opinion, the other comments in the BCA report are sufficient for the DA decision-making process and the appointed Principal Certifier needs to ensure the compliance with the current BCA prior issuing any Construction Certificate*

**Council Commentary:** The recommended amendments to the plans have been incorporated by the applicant within amended plans. The recommended conditions of consent will be included within the assessment report.

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

### **Exception to Development Standard Statement** (in accordance with cl4.6 of the Randwick LEP 2012)

**1. Exception to the Development Standard** is sought only in regard to the Floor Space Ratio, the objectives of which are set out in Clause 4.4 (1) of RLEP 2012 as follows:

Objective	Details of how the development satisfies the objective
(a) to ensure that the size and scale of the development is compatible with the desired future character of the locality	The proposed works do not affect the size, scale or aesthetic of the existing building facade addressing Carrington Rd or Guildenhorpe Ave. The scale of the proposal is less than the neighbour to the north as well as the remainder of the buildings on this site. The proposal is tucked away at the corner of the site which is not visible from neighbouring streets and barely visible from a small portion of the lane to the rear
(b) to ensure that the buildings are well articulated and respond to environmental and energy needs	The proposal is similarly articulated to the existing building. The additional first storey at the rear lifts that portion of the proposal out of the overbearing overshadowing of the north neighbour to allow at least some north sun to enter the proposal. In addition, the additional height of the proposal allows for the viable installation of a solar hot water system or photovoltaic panels at some time in the future and does so without jeopardising like installations to neighbouring properties.
(c) to ensure that the development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item	The proposed works are not within a conservation area and are not visible from any heritage items.
(d) to ensure that the development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views	(i) <u>visual bulk</u> of the proposal is significantly less bulky than the neighbours and does not impact upon the amenity of other neighbouring sites (ii) <u>privacy</u> to neighbours has been maintained by ensuring all windows facing the neighbours are small with high sills and obscure glazing (iii) <u>overshadowing</u> is not an issue due to the location of the proposal to the south of the neighbouring site as well as limiting the height of the proposed additions to lower than the party wall on the south side to the neighbouring lots within the site. (iv) <u>views</u> are not affected; the proposal is not within the sight lines of any dwellings in the direction of their views

As outlined in the Statement of Environmental Effects the additional floor space ratio proposed is minimal, only 3%.

From the above we submit that the compliance with the Floor Space Ratio requirements is both unreasonable and unnecessary for this proposal because the objectives of the development standard are achieved notwithstanding non compliance with the standard.

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**2. Environmental Planning** grounds for contravening the development standard are listed below related to specific objectives from Sect 1.3 of the Environmental Planning and Assessment Act 1979:

Objective	Details of how the development satisfies the objective
s1.3(g) to promote good design and <b>amenity</b> of the built environment	The existing residence has 3 bedrooms and minimal amenities in an area of 75m <sup>2</sup> . The single bathroom is a shared facility with the commercial space and not suitable for disabled use. The increase of the dwelling to 101m <sup>2</sup> , while still modest in size, updates the amenity to a reasonable size and includes the addition of a separate, disabled accessible toilet facility to the commercial space.
S1.3(h) to promote the proper construction and maintenance of building, including the <b>protection of the health and safety</b> of their occupants	The additional bathroom facilities have an obvious benefit to the health of the occupants, both of the residence and the commercial use. Safety of the residential occupants, particularly children, is significantly enhanced by barring the use of the residence's bathroom facilities to members of the public that may be visiting the commercial facility.

The proposed increase in floor space ratio has allowed the increase in amenities and facilities listed above in accordance with the EPA act and as such are justification for the contravention of the development standard.

### 3. Zoning objectives

Details of how the proposed development satisfies each of the objectives of the R3 zone in which it is located are provided in the table below:

Objective	Details of how the development satisfies the objective
To provide for the housing needs of the community within a medium density residential environment	Complies
To provide a variety of housing types within a medium density residential environment	Complies: The only two storey dwelling in this strata building
To enable other land uses that provide facilities or services to meet the day to day needs of residents	Complies: Commercial health centred use
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	Complies: No change to the scale or aesthetic of the existing late Art Deco facades
To protect the amenity of the residents	Complies: Separate amenities for disabled use
To encourage housing affordability	Complies: Modest scale and specification
To enable small-scale business uses in existing commercial buildings	Complies: Provides small commercial facility

The above shows that the proposed development is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

**4.** Contravention of the development standard will not raise any matter of significance for State or Regional Planning.

**5.** There is no public benefit in maintaining the development standard. The proposal is internal within the site and the public will not even be aware that any development has taken place.



**Appendix 4: DCP Compliance Table****3.3 Section B7: Transport, Traffic, Parking and Access**

DCP	Control	Proposal	Compliance
<b>3.</b>	<b>Parking &amp; Service Delivery Requirements</b>		
	Car parking requirements: <ul style="list-style-type: none"> <li>• 1space per 2 studios</li> <li>• 1 space per 1-bedroom unit (over 40m2)</li> <li>• 1.2 spaces per 2-bedroom unit</li> <li>• 1.5 spaces per 3 or more bedroom unit</li> <li>• 1 visitor space per 4 dwellings</li> </ul>	The proposal does not seek to increase the number of bedrooms or the leasable area for the business premise at the subject site. The existing single garage is not undergoing any changes. Street parking continues to be available for patrons of the business premise.	Compliant

**3.4 Section C2: Medium Density Residential**

DCP	Control	Proposal	Compliance
<b>2.</b>	<b>Site Planning</b>		
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.2</b>	<b>Deep soil area</b>		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	No change to existing % of landscaped open space and deep soil area.	Compliant.
<b>3.</b>	<b>Building Envelope</b>		
<b>3.1</b>	<b>Floor space ratio</b>		
	<b>0.9:1</b>	1.13:1	Non-compliant.  See section 7 (Clause 4.6 exception to a development standard) above.
<b>3.2</b>	<b>Building height</b>		
	12m	8.31m (no change)	Compliant
<b>3.4</b>	<b>Setbacks</b>		
<b>3.4.1</b>	<b>Front setback</b>		
	(i) The front setback on the primary and secondary property frontages must be consistent with the	No changes proposed	Compliant

DCP	Control	Proposal	Compliance
	<p>prevailing setback line along the street.</p> <p>Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>		
<b>3.4.2</b>	<b>Side setback</b>		
	<p><b>Residential flat building</b></p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> <li>- <math>14m \leq \text{site frontage width} &lt; 16m</math>: 2.5m</li> </ul> <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> <li>- Create articulations to the building facades.</li> <li>- Reserve open space areas and provide opportunities for landscaping.</li> <li>- Provide building separation.</li> <li>- Improve visual amenity and outlook from the development and adjoining residences.</li> <li>- Provide visual and acoustic privacy for</li> </ul>	<p>Existing side northern setback = 2705mm</p> <p>Proposed side northern setback = 3005mm</p>	Compliant

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DCP	Control	Proposal	Compliance
	<p>the development and the adjoining residences.</p> <ul style="list-style-type: none"> <li>- Ensure solar access and natural ventilation for the development and the adjoining residences.</li> </ul> <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>		
<b>3.4.3</b>	<b>Rear setback</b>		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	Rear setback = 22.9m	Compliant
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p>	<p>No changes are proposed to the front eastern façade facing Carrington Road.</p> <p>Rear western façade faces Hooper Lane. Articulation is provided via a staggered wall plane from the ground floor and first floor addition residential area. Windows are also provided on this elevation.</p> <p>No continuous unrelieved blank walls are proposed. The width of the first floor addition is limited to 3479mm.</p>	Compliant

DCP	Control	Proposal	Compliance
	(vi) Conceal building services and pipes within the balcony slabs.		
<b>4.2</b>	<b>Roof design</b>		
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p> <p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p>	<p>The existing roof is being retained.</p> <p>The first floor addition will provide a metal deck roofing with a simple skillion design at a 2 degree angle.</p>	Compliant

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DCP	Control	Proposal	Compliance
	<ul style="list-style-type: none"> <li>- There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences.</li> <li>- The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences.</li> <li>- Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street.</li> <li>- Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building.</li> </ul> <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.	Max building height = 8.31m	
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	<u>Ground floor</u> Proposed = 3150mm  <u>First Floor</u> Proposed = 2610mm. This is considered acceptable as per National Construction Code (NCC) Part 3.8.2 Room heights which stipulate that in a habitable room, the minimum floor to ceiling height is 2.4m.	Compliant
<b>4.5</b>	<b>Pedestrian Entry</b>		

DCP	Control	Proposal	Compliance
	<p>i) Separate and clearly distinguish between pedestrian pathways and vehicular access.</p> <p>ii) Present new development to the street in the following manner:</p> <ul style="list-style-type: none"> <li>- Locate building entries so that they relate to the pedestrian access network and desired lines.</li> <li>- Design the entry as a clearly identifiable element in the façade composition.</li> <li>- Integrate pedestrian access ramps into the overall building and landscape design.</li> <li>- For multi4dwelling housing and residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible.</li> <li>- Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to</li> </ul> <p>iii) Provide weather protection for building entries.</p>	<p>Following a site inspection on 22 June 2022, the applicant confirmed that the mixed-use dwelling will be occupied by an owner/operator. In light of this, the pedestrian access on Carrington Road through the business premise to the residential portion of the site is considered acceptable in this instance.</p> <p>In any case, an additional source of access is also available from the rear via Hooper Lane.</p>	Compliant
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p>	To be confirmed via Conditions of Consent.	Conditioned.

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DCP	Control	Proposal	Compliance
	<ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is encouraged.</li> </ul> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		
<b>4.12</b>	<b>Earthworks Excavation and backfilling</b>		
	<p>(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p>	No earthworks are proposed as part of this development.	

DCP	Control	Proposal	Compliance
	(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.		
5. Amenity			
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	<p>The subject allotment is affected by an existing residential flat building to the north which overshadows the subject dwelling for most of the day, as shown by the shadow diagrams. The proposed works ameliorate these affects through the first floor addition, configuration of bedrooms to the first floor, and the reconfiguration/addition of windows.</p> <p>The POS of subject allotment will continue to receive at least 3 hours of solar access between 8am and 4pm on 21 June.</p>	Compliant
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	The subject dwelling is bounded by a taller residential flat building to the north, and a high party wall to the south (greater than 6.5m). The solar access to the living areas of neighbouring dwellings will not be impacted by the proposed works.	Compliant
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.	At least 50% of landscaped areas of neighbouring dwellings will continue to receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.	
(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.			
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights.	A BASIX Certificate has been submitted demonstrating that the development will achieve compliance with the BASIX water, energy, and thermal efficiency targets.	

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DCP	Control	Proposal	Compliance
	clerestory windows, fanlights above doorways and highlight windows in internal partition walls.		
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Bedrooms 1~3 are all provided with windows to outdoor areas.	Compliant
<b>5.3</b>	<b>Visual privacy</b>		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul>	<p><u>Ground Floor</u></p> <ul style="list-style-type: none"> <li>- W01 is a bathroom window. Faces west towards rear yard of subject premise.</li> <li>- D01 is a sliding door to the dining/family area. Faces north towards dividing wall of neighbouring property.</li> <li>- W01 is a kitchen window. Faces north towards dividing wall of neighbouring property.</li> </ul> <p><u>First Floor</u></p> <ul style="list-style-type: none"> <li>- W06 is a bedroom window. Faces west towards rear yard of subject premise.</li> <li>- W04 and W05 is to a bedroom. Faces north towards dividing wall of neighbouring property.</li> <li>- W03 is to a bathroom. Faces west towards rear yard of subject premise.</li> </ul>	Compliant

DCP	Control	Proposal	Compliance
5.4	<b>Acoustic Privacy</b>		
	(i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> <li>- Double glazing</li> <li>- Operable screened balconies</li> <li>- Walls to courtyards</li> <li>- Sealing of entry doors</li> </ul>	<p>The operational details of the change of use to business premise (physiotherapy clinic) are listed below:</p> <ul style="list-style-type: none"> <li>• Monday to Friday: 7am to 7pm</li> <li>• Saturday: 7am to 1pm</li> <li>• Sunday: Closed</li> <li>• Staff and patron numbers will range from 2 - 5 people.</li> </ul> <p>Whilst the change of use could be performed as exempt development under the SEPP, it has been considered here within the DA. It is noted the proposed hours of operation do not contravene the standards of the SEPP.</p> <p>Notwithstanding, additional conditions of consent will be imposed regarding the operation of the business premise to ensure the protection of amenity of neighbouring dwellings.</p>	Conditioned.

**Responsible officer:** Andy Ng, Environmental Planning Officer

**File Reference:** DA/4/2022

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**Development Consent Conditions  
(Mixed use)**

<b>DA No:</b>	DA/4/2022
<b>Property:</b>	Shop 50, 50-54 Carrington Road, RANDWICK NSW 2031
<b>Proposal:</b>	Alterations and additions to existing mixed-use building including use of part of ground floor level as a physio clinic with associated alterations, partial demolition, ground and first floor extensions to the rear with associated works.
<b>Recommendation:</b>	Approval

**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 listed below endorsed with Council's approved stamp and supporting documentation accompanied with the subject application, 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>
Site Plan – Drawing No. DA01 – Revision B	AS	Nov 2021	14 July 2022
Floor Plans Ground Fl, First Floor – Drawing No. DA02 – Revision B	AS	Nov 2021	14 July 2022
Elevations & Sections North Elevation (Section 4), Section 5, West Elevation Roof Plan – Drawing No. DA03 – Revision B	AS	Nov 2021	14 July 2022

<b>BASIX Certificate No.</b>	<b>Dated</b>	<b>Received by Council</b>
BASIX Certificate No. A445126_02	Friday, 24, December 2021	14 July 2022

**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**

2. 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**

3. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

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

**Section 7.12 Development Contributions**

4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$253,000 the following applicable monetary levy must be paid to Council: \$2530.

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).

**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**

5. 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).

6. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifier.

#### **BASIX Requirements**

7. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

*The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.*

#### **Site stability, Excavation and Construction work**

8. A report must be obtained from a suitably qualified and experienced *professional engineer*, which includes the following details, to the satisfaction of the Certifier for the development:-
  - a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land.
  - b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
  - c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
  - d) The adjoining land and buildings located upon the adjoining land must be adequately supported at all times throughout demolition, excavation and building work, to the satisfaction of the *Principal Certifier*.
  - e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the *Certifier*.

#### **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.

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**Certification and Building Inspection Requirements**

9. 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 and any applicable requirements of the *Home Building Act 1989* must be satisfied 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.

**Dilapidation Reports**

10. A dilapidation report (incorporating photographs of relevant buildings) must be obtained from a *Professional Engineer*, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier*.  
  
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 Site Management Plan**

11. 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 Plan**

12. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety requirements.

The Demolition Work Plan must 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.

#### **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**

13. 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.

#### **Building & Demolition Work Requirements**

14. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2011;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Randwick City Council Asbestos Policy (adopted 13 September 2005).

*A copy of Council's Asbestos Policy is available on Council's web site or a copy can be obtained from Council's Customer Service Centre.*

#### **Removal of Asbestos Materials**

15. 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**

16. 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**

17. 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.

#### **Sediment & Erosion Control**

18. 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 must be included in the Construction Site Management Plan and a copy must 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.

#### **Dust Control**

19. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

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

*Dust control measures and practices may include:-*

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- *Installation of a water sprinkling system or provision hoses or the like.*
- *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- *Landscaping and revegetation of disturbed areas.*

#### **Temporary Site Fencing**

20. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site throughout demolition, excavation and construction works, to the satisfaction of Council, in accordance with the following requirements:

- a) Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), or heavy-duty plywood sheeting (painted white), or other material approved by Council.
- b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
- c) All site fencing and hoardings must be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
- d) An overhead ('B' Class) type hoarding is required to be provided to protect the public (unless otherwise approved by Council) if:
  - materials are to be hoisted (i.e. via a crane or hoist) over a public footway;
  - building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment;
  - it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or occupants upon adjoining land;
  - as may otherwise be required by WorkCover, Council or the *Principal Certifier*.

#### **Notes:**

- *Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*
- *If it is proposed to locate any site fencing, hoardings, amenities or articles upon any part of the footpath, nature strip or public place at any time, a separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.*

**Public Safety & Site Management**

21. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) 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.
- c) 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.*

- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers 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.
- f) 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.

**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 1.00pm only</li> <li>• Saturday - No work permitted</li> </ul>



	<ul style="list-style-type: none"> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development	<ul style="list-style-type: none"> <li>• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - 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.*

#### Survey Requirements

24. 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 footings and boundary retaining structures,
- prior to construction (pouring of concrete) of each 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

25. 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.

#### Occupation Certificate Requirements

26. 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*.

#### Fire Safety Certificates

27. Prior to issuing an interim or Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire and Rescue NSW.

**Structural Certification**

28. A Certificate must be obtained from a *professional engineer*, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council with the Occupation Certificate.

**BASIX Requirements & Certification**

29. 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.

**Noise Control Requirements & Certification**

30. The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

In this regard, the operation of the plant and equipment shall not give rise to an  $L_{Aeq, 15 \text{ min}}$  sound pressure level at any affected premises that exceeds the background  $L_{A90, 15 \text{ min}}$  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.

31. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Control Manual, Industrial Noise Policy and Council's development consent.

A copy of the report must be provided to the *Principal Certifier* and Council prior to an occupation certificate being issued.

**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.

**Hours of Operation**

32. The hours of operation of the physiotherapy clinic shall be as follows:

- Monday to Friday: 7am to 7pm
- Saturday: 7am to 1pm
- Sunday: Closed

**Staff and Patron Numbers**

33. The maximum number of people occupying the physiotherapy clinic must not exceed 5 people.

**Use of parking spaces**

34. The car spaces within the development are for the exclusive use of the occupants and visitors of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

**Fire Safety Statements**

35. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council (at least on an annual basis) in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a competent fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

**Environmental Amenity**

36. 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.

**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 \$6,000) 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), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. 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 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 any adjoining land.

Finished ground levels external to the building are to 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.

- A11 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.

- A12 An application must be submitted to and 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.

- A13 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.



## Development Application Report No. D51/22

**Subject:** 98-100 Doncaster Avenue, Randwick (DA/180/2020)

### Executive Summary

<b>Proposal:</b>	Partial demolition of the existing semi-detached dwellings at the rear to accommodate the construction of a three-storey boarding house comprising 20 boarding rooms, 1 on-site Manager's room, communal room, provision of 1 car-share parking space, 12 bicycle spaces, communal outdoor space, landscaping, and associated works (variation to motorcycle parking standard),
<b>Ward:</b>	West Ward
<b>Applicant:</b>	Primus DMS Pty Ltd
<b>Owner:</b>	Mr W H P Passas and Mrs E N Passas
<b>Cost of works:</b>	\$2,221,624
<b>Reason for referral:</b>	Greater than 10% variation to the motorcycle parking requirements under the SEPP ARH 2009.

### Recommendation

That the RLPP refuse consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/180/2020 to partially demolish the existing semi-detached dwellings at the rear to accommodate the construction of a three-storey boarding house comprising 20 boarding rooms, 1 on-site Manager's room, communal room, provision of 1 car-share parking space in the frontage, 12 bicycle spaces, communal outdoor space, landscaping and associated works (variation to motorcycle parking), at No. 98 and 100 Doncaster Avenue Kensington, for the following reasons:

1. The proposal does not comply with the *State Environmental Planning Policy (Affordable Rental Housing) 2009* in that the proposal does not satisfy the character test given failure to comply with provisions such as rear setback, car parking and motorcycle parking that results in the development not being in accordance with the desired future character.
2. The proposal does not comply the development standard under clause 30(1)(h) motor cycle parking in the SEPP ARH, and the variation is not in the public interest as the development is not in accordance with the relevant objectives of the standard and the R3 zone.
3. The proposal does not comply with the Clause 29(2)(e) controls for car parking in the SEPP ARH.
4. The proposal does not satisfy the requirements under clause 4.6 - Exceptions to Development Standards in the SEPP ARH, in that the request for the variation to the motorcycle parking is not well founded.
5. The proposal does not comply with the relevant objectives and development controls of the RDCP with regards to:
  - Rear setbacks,
  - Landscape open space
  - Parking
6. The proposal is not in the public interest as the boarding house proposes significant deviations from both the numerical and merit-based controls.

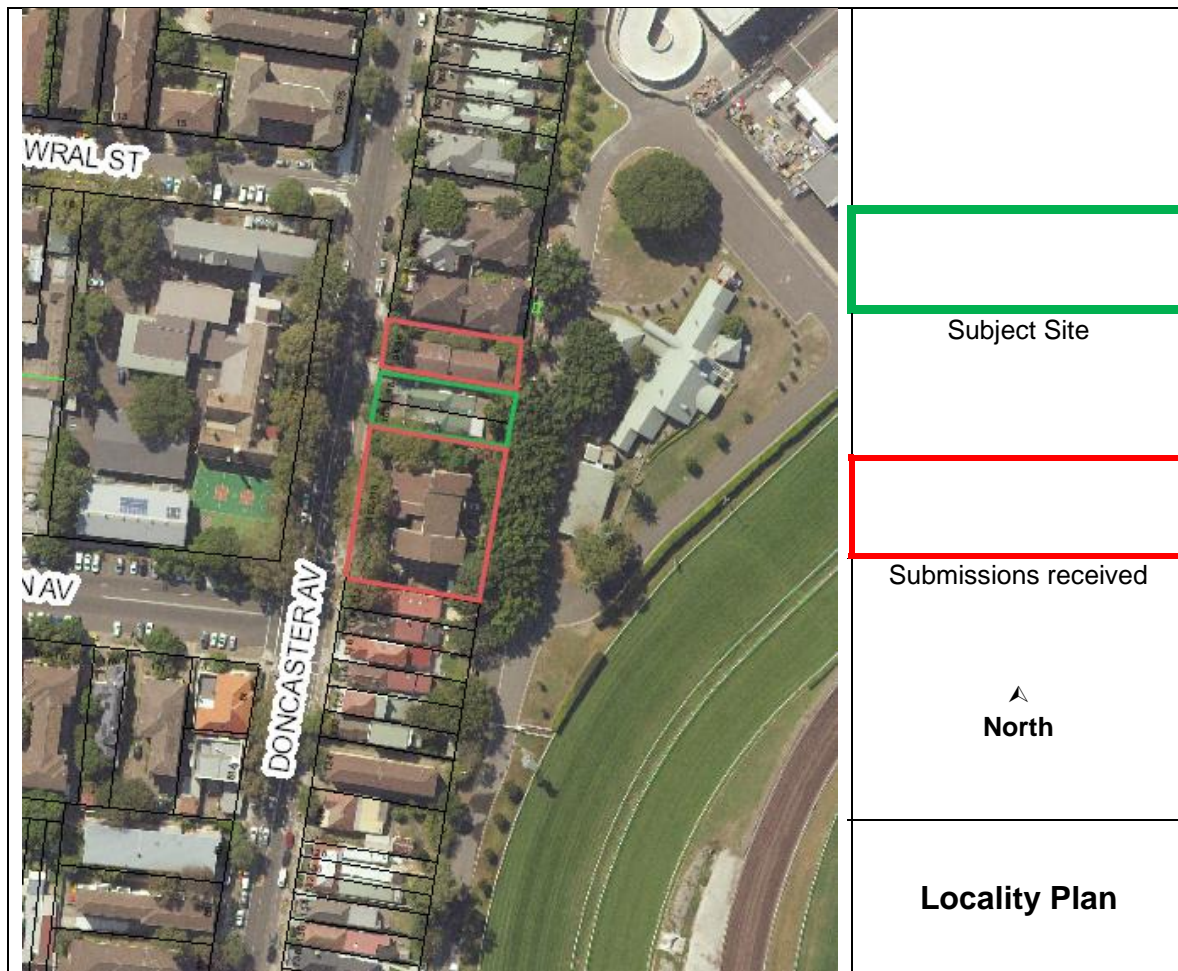
### Attachment/s:

Nil

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## 1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for motorcycle parking in SEPP ARH 2009 by more than 10%.

The proposal seeks development consent for partial demolition of the existing semi-detached dwellings at the rear to accommodate the construction of a three-storey boarding house comprising 20 boarding rooms, 1 on-site Manager's room, communal room, provision of 1 car-share parking space, 12 bicycle spaces, communal outdoor space, landscaping, and associated works.

The key issues associated with the proposal relate to:

- Whether the carparking, motorcycling and servicing needs of the development can be satisfactorily accommodated on site noting that the substantial shortfall or non-compliance with car parking (requiring 10.5 space providing 1 on site car share space) and motorcycle parking (requiring 4 (a development standard) providing nil) in the SEPP ARH; and
- Whether the design of the boarding house provides for suitable levels of amenity for future occupants

It is noted that in respect to the above issues, the applicant submitted amendments to address the issues however these were not supportable noting in particular that it is not considered that the Clause 4.6 variation to the motorcycle parking development standard does not provide sufficient environmental planning grounds. It is noted, that since lodgement a change in site ownership has occurred.

The proposal is recommended for refusal.



## 2. Site Description and Locality

The subject site is known as 98 and 100 Doncaster Avenue Kensington and is legally described as Lot 101 in DP 1137442 and Lot 100 in DP 1137442, respectively. The combined site is 613.2m<sup>2</sup>, is regular in shape and has a 15.24m frontage to Doncaster Avenue to the west. The site contains a pair of semi-detached dwellings identified as having elements of architecture that contribute to the significance of the Heritage Conservation area in which it is located. The site slopes approximately 700mm from front to rear backing onto Randwick Racecourse.



Figure 1: Street view of subject site containing the pair of single storey semi-detached dwellings and southern adjoining multi storey RFB at right in photo

An aerial view and oblique view of the site and surrounding area are shown below.



Figure 2: Aerial view of the site and surrounding area



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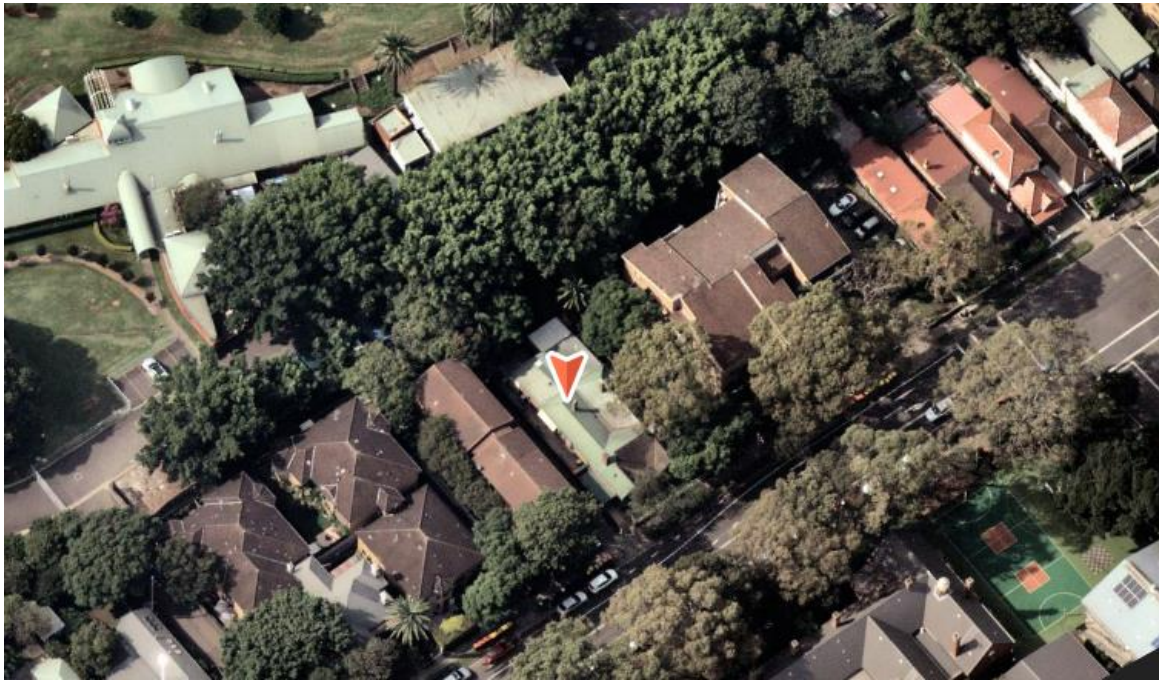


Figure 3: An oblique view of the site and surrounding area is shown below.

### 3. Relevant history

Pre DA advice was provided to the applicant under PL/50/2019 for demolition and building of a new boarding house. The advice noted the following concerns:

- The proposed development fails to provide adequate parking in accordance with the provisions of clause 29 of SEPP ARH. See Referral Comments from Council's Development Engineer for further detail.
- Small size of certain boarding rooms below the 12m<sup>2</sup> required under the SEPP ARH.
- Inconsistency with the character of the local area.
- Exceedance of the FSR and bonus afforded under SEPP ARH
- Shortfall of area indoor communal living space for number of occupants.
- Inappropriate location of side facing balconies

Notably, Council advised that on heritage conservation grounds that *the demolition of the pair of semi-detached buildings which were highly contributory to the significance of the HCA in which they were located, would not be supported unless there was evidence that the buildings were structurally unsound.*

*It was further advised that this raised further issues with the redevelopment of the site for the purpose of a boarding house which generates a larger parking demand than that of dwellings. The siting of the existing dwellings severely restricts the ability to provide appropriate off-street parking to service the occupants of a boarding house. It appears that the existing northern side setback is not of sufficient width to permit an internal driveway to the rear of the site and as such Council questions whether any additional on-site parking can be provided. It is considered that the retention of the dwellings would not justify a gross non-compliance with parking. While a shortfall in parking may be supported to some extent through additional provisions such as car share schemes and the like, the number of boarding rooms would have to be proportionate to the level of parking.*

*In view of the above, while Council acknowledges that development for the purpose of a boarding house is permitted on the site, it appears that the constraints of the site do not facilitate development of this type and as such Council questions whether the subject site would be more suited to an alternative type of development of a lesser density. Alternatively, a low scale boarding house which incorporates the existing dwellings and provides a reduced number of boarding rooms commensurate to the parking may be supported.*

### 4. Proposal

The proposal seeks development consent for partial demolition of the existing semi-detached dwellings at the rear to accommodate the construction of a three storey boarding house comprising 20 boarding rooms, 1 on-site Manager's room, communal room, provision of 1 car-share parking space, 12 bicycle spaces, communal outdoor space, landscaping and associated works.

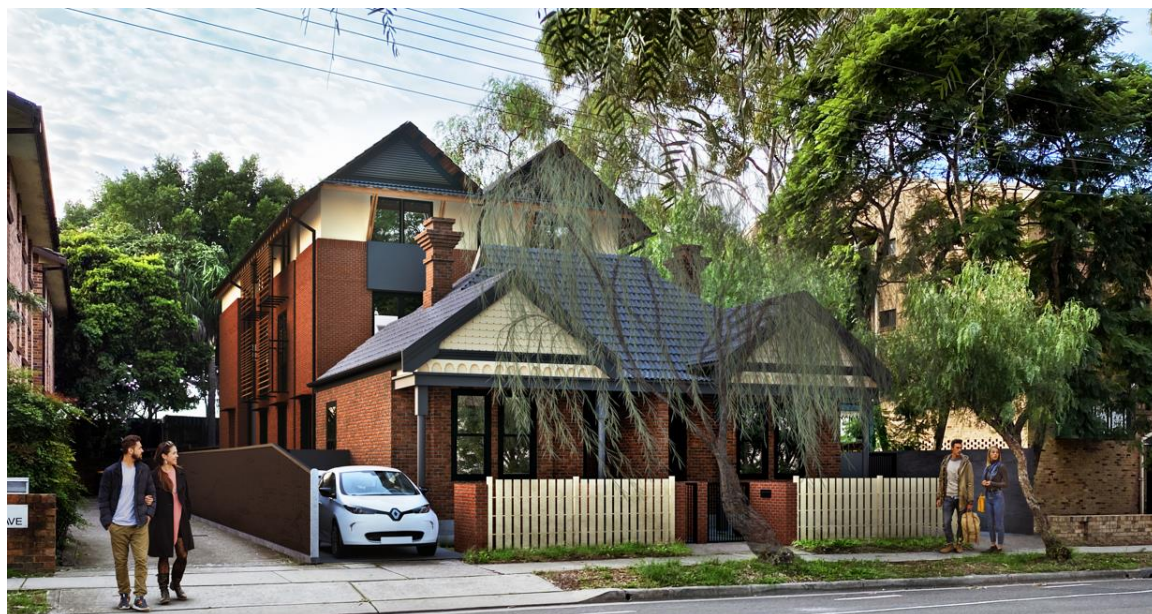


Figure 4: Photomontage of the proposed development. (source: applicant)

## 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. The following submissions were received as a result of the notification process:

- 12/102-110 Doncaster Avenue Kensginton
- 86-92 Doncaster Avenue, Kensington

Issue	Comment
<p>Sunlight to rear yard</p> <p>Detrimental impact on sunlight and privacy of communal rear yard of No. 102-110 Doncaster Avenue.</p>	<p>Sunlight</p> <p>The proposed 5.45m rear setback is short of the minimum 6.03m rear setback control applicable to other medium density developments in the R3 zone and casts additional shadowing than that considered reasonable. This forms part of the reasons for refusal.</p> <p>Privacy</p> <p>There are no south facing windows at the upper levels that would pose any privacy impacts to the rear yard of the southern neighbour. A breezeway opening is proposed however this is screened.</p>
<p>Overshadowing</p> <p>Reduction of sunlight to apartments at 102-110 Doncaster Avenue.</p>	<p>Solar access to the north facing windows and balconies at No. 102-110 Doncaster Avenue will not be impacted from after 11am to 3pm at the winter solstice ensuring no unreasonable overshadowing.</p>



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Issue	Comment
<p>Parking and traffic</p> <p>Car share space is inadequate for the proposal and exacerbates the current high demand for parking and congestion in the street noting the traffic and parking demand created by the public school in close proximity to the site.</p>	<p>Noted, the shortfall in parking and increased demand for on street parking is one of the reasons why the proposal is not supported.</p>
<p>Health and safety impacts</p> <p>A boarding house facility catering to international lodgers in the pandemic climate will potentially increase risk to public health and safety.</p>	<p>The health and safety of the population or residents in the vicinity of the site is not considered to be unduly impacted by the proposed use of the site as a boarding house. Boarding houses are a permissible form of development catering to a wide range of occupants such as key workers and local students other than overseas international students/lodgers.</p>
<p>Oversupply of boarding houses and apartments</p> <p>The community and economic need for boarding houses in the Kensington area is limited</p>	<p>Whilst the need for rental housing fluctuates there is generally always a relatively high demand for affordable rental housing within the Randwick LGA. In addition, supply is not a consideration under s4.15.</p>
<p>Impact on Community and safety</p> <p>The boarding house with a high turnover of transient lodgers, and or wrong type of people, does not fit into the local community population made up of long-standing local families with children and in close proximity to a school.</p>	<p>Boarding houses by definition are a form of affordable housing for a wide range of lodgers including students, nurses, and local workers. Boarding houses are a permissible form of development and when well managed minimise any detrimental impacts on the amenity of community. Conditions of consent along with adherence to a robust PoM will minimise impacts.</p>
<p>Noise impact</p> <p>Adverse noise impacts from 20 room boarding house</p>	<p>An acoustic report has been submitted with the application and if it were recommended for approval appropriate conditions may be imposed to adequately manage noise impacts.</p>

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Affordable Rental Housing) 2009

The subject application is made pursuant to the SEPP (Affordable Rental Housing) 2009 (SEPP ARH). Clause 29 provides – *Standards that cannot be used to refuse consent* and Clause 30 provides - *Standards for boarding houses*.

Note: The current SEPP applying to boarding house development in NSW is the SEPP Housing 2021 which came into force on 26 November 2021. An assessment is not carried out against the current SEPP Housing due to Savings and transitional provisions pursuant to Clause 7A (1)(a) which state that this policy does not apply to *a development application made, but not yet determined, on or before the commencement date*, Therefore the provisions under SEPP ARH apply to this DA.

Therefore, an assessment against the SEPP ARH for boarding houses is provided below:

Assessment of Clause 29 – Standards that cannot be used to refuse consent	
Standard	Assessment
<p><b>(1) Floor Space ratio</b></p> <p>The density and scale of the buildings when expressed as a floor space ratio are not more than:</p>	<p>The subject site has an area of 613.2m<sup>2</sup>.</p> <p>In response to (a), the site is zoned R3 Medium Density Residential and the maximum floor</p>

<b>Assessment of Clause 29 – Standards that cannot be used to refuse consent</b>	
<b>Standard</b>	<b>Assessment</b>
<p>(a) <i>the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</i></p> <p>(b) <i>if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or</i></p> <p>(c) <i>if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</i></p> <p>(i) <i>0.5:1, if the existing maximum floor space ratio is 2.5:1 or less.</i></p>	<p>space ratio for any form of residential accommodation permitted on the site (based on the land size) under the RLEP 2012 is 0.9:1 With a 0.5:1 bonus via ARH SEPP equaling a FSR of 1.4:1.</p> <p>The proposal has a maximum FSR of 0.93:1 (or GFA of 574.94m<sup>2</sup>) which complies with the development standard.</p>
<p><b>(2) (a) Building height</b></p> <p><i>if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,</i></p>	<p>The maximum permitted building height is 12m.</p> <p>The proposed development has a building height of 11.377m based on the roof RL (38.527) and survey plan (RL27.15 being 200mm below the existing floor level RL27.35).</p> <p><b>Compliant</b></p>
<p><b>(b) Landscaped area</b></p> <p><i>if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</i></p>	<p>The Proposal maintains the existing front setback and garden areas in front providing landscaping in the front of the site now sought to be allocated as Managers POS and Communal open space associated with the communal living/dining room. The retention of the existing open spaces within the front setback is consistent with the streetscape.</p> <p><b>Compliant.</b></p>
<p><b>(c) Solar access</b></p> <p><i>where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</i></p>	<p>The communal dining room is located at the southwestern corner of the existing building behind a verandah roof, and the applicant has not adequately demonstrated that the dining room will receive 3 hours of direct sunlight for 3 hours (at the required time) noting that the angle of the sun at 12 noon is unlikely to reach the dining room's internal floor area.</p> <p><b>Non-compliant</b></p>
<p><b>(d) Private open space</b></p> <p><i>if at least the following private open space areas are provided (other than the front setback area):</i></p>	<p>(i) Several areas of communal open space are provided including:</p>



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Assessment of Clause 29 – Standards that cannot be used to refuse consent	
Standard	Assessment
<p>(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</p>	<ul style="list-style-type: none"> <li>10.37m<sup>2</sup> within the front setback,</li> <li>11.67m<sup>2</sup> within a central courtyard accessible off the communal living/dining room</li> <li>26.94m<sup>2</sup> within central courtyard however it is unclear how this area is only accessible from the gate at the end of the carspace</li> <li>100m<sup>2</sup> at the rear of the site comprising a common terrace and outdoor space.</li> </ul> <p>Concerns with the communal open space provided include: The majority of communal open space areas are not directly connected to the indoor communal rooms except for the central courtyard area to the south which has an area of only 11.67m<sup>2</sup> which is well short of the 20m<sup>2</sup> minimum required. The 10.37m<sup>2</sup> area within the front setback requires traversing through the corridor.</p> <p>(ii) The private open spaces for the manager's room is entirely located within the front setback (compliant with the minimum dimension's requirements) however this area is not private and to maintain a reasonable level of privacy, this outdoor space will require a 1.8m high privacy screen which would be unsightly and inconsistent with the landscape treatment of the front setback under Clause 29(2)(d) of ARH SEPP and RDCP 2013.</p> <p><b>Non-compliant.</b></p>
<p><b>(e) Parking</b></p> <p>(e) parking if—</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p><b>(ia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</b></p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>The minimum number of car parking spaces for the proposal is 10.5 (rounded to 11) onsite car parking spaces. 1 onsite car share space is provided. An accessible car space is not provided.</p> <p>The car space provided has a substandard width and the substantial shortfall is not supported by Council noting alternative options submitted by the applicant which are not considered to have appropriately justified the substantial shortfall in car parking and the only space provided to be a car share space remains of a substandard width.</p> <p>It is noted that the applicant has provided details showing that a basement isn't able to be provided without significant works to the front of the existing building which in the opinion of the assessment officer would detract from the Heritage Conservation of the area.</p>

<b>Assessment of Clause 29 – Standards that cannot be used to refuse consent</b>	
<b>Standard</b>	<b>Assessment</b>
	Overall, the development falls short of the minimum by 9.5 (rounded to 10) spaces (91%), which is unacceptable.  <b>Non-compliant, refer to development engineers' comments in Appendix of this report.</b>
<b>(f) Accommodation Size</b>  <i>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</i>  <i>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</i>  <i>(ii) 16 square metres in any other case.</i>	The development includes 21 single rooms (6 at ground inclusive of 2 accessible rooms and 7 each at 1 <sup>st</sup> and 2 <sup>nd</sup> floor level).  <b>Complies</b>
(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	<b>Complies</b>

<b>Assessment of Clause 30 - Standards for Boarding Houses</b>	
<b>Standard</b>	<b>Assessment</b>
1 (a) if a boarding house has 5 or more boarding rooms, at least one (1) communal living room will be provided.	More than 5 boarding rooms are proposed, and at least one communal living room has been provided.  <b>Complies</b>
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.	All boarding rooms are less than 25m <sup>2</sup>  <b>Complies</b>
(c) no boarding room will be occupied by more than 2 adult lodgers.	All are single rooms <b>Complies</b>
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.	Adequate bathroom and kitchen facilities are provided in each boarding room.  <b>Complies</b>
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager.	A boarding house manager is accommodated on-site.  <b>Complies</b>
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.	The land is zoned R3 – Medium Density Residential.  <b>Complies</b>

**Assessment of Clause 30 - Standards for Boarding Houses**

<b>Standard</b>	<b>Assessment</b>
<i>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</i>	12 bicycle and zero motorcycle parking spaces are provided (refer to Development Engineer referral comments in appendix section of report).
	<b>Non-compliant with motorcycle parking spaces required for the development</b>

**Assessment of Clause 30A- Character of the local area****Character of the local area:**

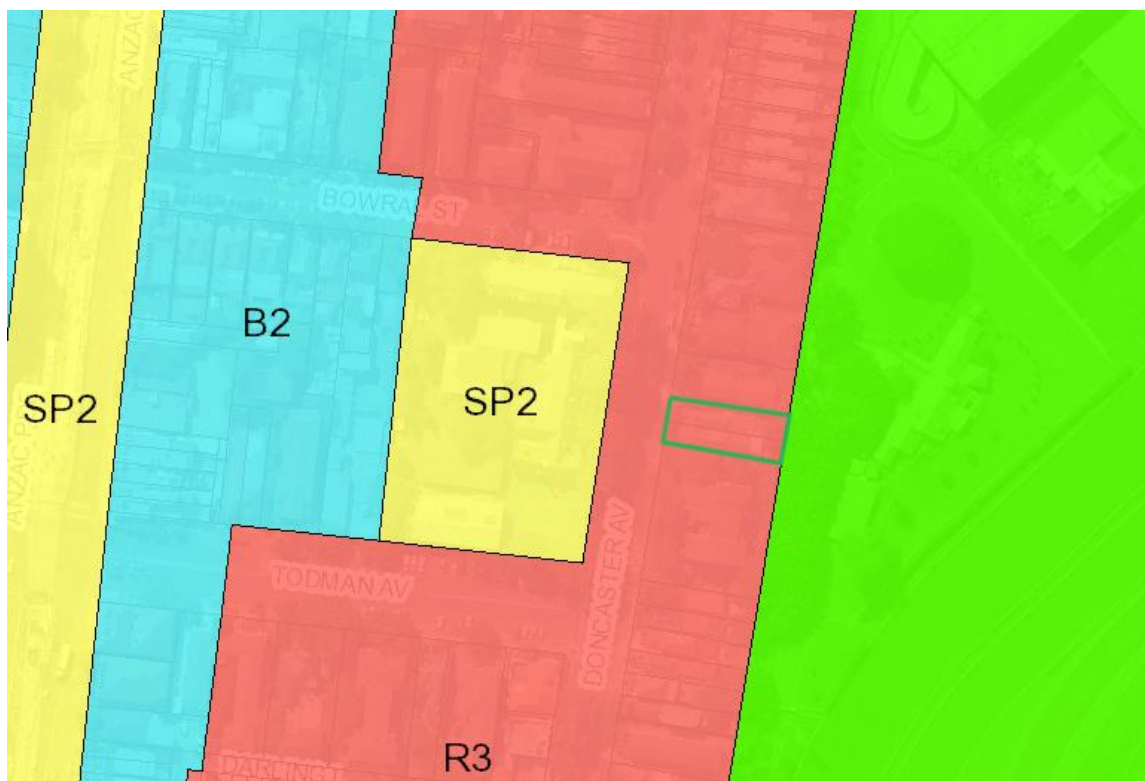
An assessment is carried out in relation to the context, compatibility of the built form, compatibility of the use and compatibility of the R3 zone.

**Context:**

The subject site and surrounding area is located within the R3 zone medium density residential development and contains an eclectic mix of building styles.

The majority of nearby development's containing medium density residential uses with built forms that generally contain multi-storey scaled development as well as low density single and semi-detached and terrace housing of low-rise residential buildings. The area is therefore considered to contain an existing conservative character as well as undergoing transition from currently underdeveloped sites that are neither listed as heritage items nor considered to be contributory to the heritage conservation area.

The opposite side of the street contains a school (in zone SP2 – special activities) and at the rear of the site is Randwick Racecourse (a heritage item and zoned RE1 Public Recreation). The area in which the site sits is identified in the LEP as a Heritage Conservation Area and the subject site contains a pair of semi-detached dwellings identified as contributory in features to the significance of the conservation area (see also Heritage planner comments in Appendix section of this report). Several heritage items are in close proximity to the site and



Map of subject site and surrounding zones



**Assessment of Clause 30 - Standards for Boarding Houses****Standard****Assessment**

Aerial of subject site and surrounding heritage conservation area (thatched) and heritage items (cream shaded).

**Compatibility of built form:**

The site is located within the R3 Medium Density Residential zone where boarding houses are permissible with consent.

The development along Doncaster Avenue will read as retaining the front part of the semi-detached pair of dwellings with the additions located well behind the main ridge line to the rear. Both the Design Excellence Advisory Panel and Councils Heritage planner support the retention of the pair of semi-detached dwellings at the front noting the contributory nature of the pair of semi-detached dwellings to the heritage conservation area.

There are concerns that the proposed rear setback is short of the predominant rear setback observed for other development in the area and as such it is out of character with the area.

**Compatibility of use:**

Council acknowledges that development for the purpose of a boarding house is permitted on the site, however as the significant shortfall in parking and no motorcycle parking being provided suggest, and the inability to provide for a suitably dimensioned parking space or basement parking without detracting from the contributory features of the existing building, it appears that these constraints do not facilitate development of this type and as such Council questions whether the subject site would be more suited to an alternative type of development of a lower scale boarding house which incorporates the existing dwellings and provides a reduced number of boarding rooms commensurate to the parking that is able to be provided.

In terms of compatibility of use, the proposed boarding house containing 21 single rooms is not suitable for the site and will be out of character with what might reasonably occur were the site to be redeveloped for an appropriately intensity of boarding house development that does not unreasonably impact on the additional parking demand within the surrounding network. It is considered that the proposal fails to provide an operational outcome consistent with surrounding character and does not minimise impacts upon adjoining sites.

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<b>Assessment of Clause 30 - Standards for Boarding Houses</b>	
<b>Standard</b>	<b>Assessment</b>
<b>Consistency with the objectives of the R3 Medium Density zone:</b>  The proposed development is inconsistent with the objectives of the R3 zone having particular regard to not protecting the amenity of residents nor contributing to the desired future character of the area.  Overall, the proposed development does not satisfy the local character test.	

## 6.2. SEPP (Vegetation in Non-rural Areas) 2017

The proposal involves the removal of trees, and the subject development application seeks the appropriate development consent. Councils Landscape officer has not provided comments given the proposal is recommended for refusal.

## 6.3. State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. Whilst the application was submitted whilst SEPP 55 applied there are no savings provisions.

Clause 4.6 of the SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land and whether the site is suitable for residential development. The historical use of the site is for residential purposes as are surrounding uses; therefore, it's not anticipated that the site is potentially contaminated.

The subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. Accordingly, nothing restricts Council, under the SEPP, from consenting to the carrying out of the development subject to appropriate conditions of consent.

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

The site is zoned R3 medium density residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is inconsistent with the specific objectives of the zone in that the proposed activity and built form will result in adverse impacts on the amenity of residents relating to increased parking demand.

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

<b>Clause</b>	<b>Development Standard</b>	<b>Proposal</b>	<b>Compliance (Yes/No)</b>
Cl 4.4: Floor space ratio (max)	0.9:1 plus 0.5:1 bonus totaling 1.4:1 maximum afforded under SEPP ARH 2009	0.9376:1	Yes
Cl 4.3: Building height (max)	12m	11.377m	Yes

### 6.4.1. Clause 5.10 - Heritage conservation

Council's Heritage planner has carried out an assessment against the relevant matters for consideration in Clause 5.10 of the LEP and subject to recommended conditions of consent does not object to the proposed development on heritage grounds (see Appendix 1).

## 7. Clause 4.6 exception to a development standard – Motorcycle requirements for boarding houses (Clause 30(1)(h))

The proposal seeks to vary the following development standard contained within SEPP (Affordable Rental Housing) 2009:

Clause 30(1)(h) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH) prescribes the minimum motorcycle parking rate for boarding houses as follows:

*A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following-*

*(1)(a)... (g)*

*(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

The proposed boarding house includes 21 boarding rooms including Manager's room and in accordance with the above generation rate, four (4) motorcycle parking spaces are required as indicated in the table below.

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Motorcycle parking – SEPP ARH	4	Nil	4 spaces	100%

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 motorcycle development standard (CI 30(1)(h) of SEPP ARH)

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

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

The applicant's written request seeks to justify the contravention of the 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.

Applicant states:

*Compliance with the minimum motorcycle parking development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved notwithstanding non-compliance with the standard.*

*There are no stated objectives to Clause 30(1)(h) of ARH SEPP. The entirety of Division 3 of the ARP SEPP (which includes Clause 30) does not contain any specific objectives for boarding house developments. In lieu of specific objectives, the overall objectives for development under the SEPP have been considered. These are:*

*"The aims of this Policy are as follows:*

- (a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation."*

*The underlying policy objective of the ARH SEPP is to incentivise affordable rental housing developments within accessible locations. The Policy has the effect of encouraging affordable developments within a variety of building types and development sizes, dispersed throughout a Local Government Area.*

*In this regard, the subject site satisfies the accessibility criteria of the SEPP, and the proposed development is for a form of affordable accommodation that will integrate into the character of the existing locality and will go some way to meeting housing demand. The proposal therefore offers public and social benefits.*

*It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.*

*As detailed in Section 6 above (adequately addressing matters required to be demonstrated by subclause 3 (clause 4.6 (4)(A))), given the circumstances of the case which include excellent access to public transport services (light rail and buses), car sharing facilities and the proximity to the University and hospital and likely characteristics of future occupants (students, nurses, etc) the provision of a lower parking provision is acceptable.*

*It is thus considered that the proposed development is consistent with the objective of the development standard (albeit the general objectives under the SEPP).*

Assessing officer's comment:

It is not considered that the applicant has provided suitable justification for satisfying the objectives of the standard notably it is inconsistent with the following objectives:

- (a) *to provide a consistent planning regime for the provision of affordable rental housing, and*
- (b) *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*

The main contentions with the applicants' arguments (contained in section 5, 6 and 7 of their submission) are as follows:

Boarding house form:

- The form of the boarding house as affordable accommodation is not considered a relevant reason noting that it focuses on the development as a whole rather than on the particular variation to the motorcycle development standard. Notwithstanding, some changes to the physical form can be made to make it more effective form of affordable housing such as to the internal layout and increased rear setbacks. The main concern is the excessive number of boarding rooms which gives rise to the non-provision of motorcycle parking that isn't considered to be representative of the effective delivery of new affordable housing.

Motorcycle Parking demand

- The applicant's statement that the demand for movement in close proximity to hospital and university is being met by occupation by nurses, students, is not considered a conclusive justification mainly because the development for which consent is sought is for a boarding house which provides affordable accommodation for a wide range of persons that don't necessarily rely on close proximity to the hospital or university. Whilst the particular occupancy for nurses and students is a matter which can be given weight however, it is only in the context of the application of the relevant planning controls, in this case Division 3: Boarding houses of the SEPP ARH. As such, it is not considered that this argument, in the absence of details on motorcycle parking demand being provided, establishes that the demand for movement is not needed by providing motorcycle parking, rather than as a consequence of the location of the subject site in proximity to UNSW and a range of public transport options.
- The applicant reference to a walk-score and transit score, as being a sufficient environmental planning ground is considered counterintuitive as scores between 70-89 whilst indicating most errands can be accomplished on foot or via public transport, it also means that not all errands can be accomplished by walking or taking public transport.
- The reference to an oversupply of bicycle parking would appropriately offset the non-supply of motorcycle parking spaces is not backed up with conclusive evidence noting the absence of motorcycle demand data. In addition, the notion of a future emergence of bicycle pathways, indicates a level of uncertainty and negates the necessity to justify the current variation is justified.

- The reference to 5 car share spaces is not appropriately qualified noting that it potentially relies on other development sites that have installed car share spaces to offset the shortfall of parking provided on their development site. In addition, the proposed on-site car share space cannot be considered as offsetting any motorcycle parking demand given its 2.37m width is short of the 3m minimum required under the relevant standards.

In conclusion, the applicant's written request is not considered to have adequately demonstrated that compliance with the motorcycle development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

Applicant:

*Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the following planning grounds are submitted to justify contravening the minimum motorcycle parking requirement:*

- The inability to provide motorcycle parking is a direct consequence of the decision to retain the front portion of the existing buildings on heritage grounds and the resultant inability to incorporate basement car parking.*
- The proposed development provides for sustainable alternative transport options by providing additional bicycle parking spaces over the number required under the ARH SEPP.*

*Twelve (12) bicycle spaces are provided, over and above the requirement for four (4) spaces under the ARH SEPP.*

*The provision of more bicycle parking spaces than required supports Randwick Council's objectives of supporting active and healthy lifestyles and promoting cycling as a safe, convenient, and clean form of transport. It may also encourage residents to utilise cycling to access major activity nodes such as UNSW, Princes of Wales Hospital, Centennial Park, and the beaches. More importantly, it will compensate for the lack of motorcycle parking spaces.*

- The need for motorcycle parking is reduced given that the site is in a highly accessible location with convenient access to surrounding amenities such as restaurants, cafés, bars, supermarkets, shopping centres, parks and schools.*

*With reference to WalkScore.com, the resultant Walk Score and Transit Score are 84 and 73, respectively. This walk score, in conjunction with the various cycleways in the locality, indicates that a high proportion of trips can be accomplished using active travel modes.*

- The need for motorcycle parking is reduced given that the site has convenient access to a variety of public transport options.*

*The site is within 400m walking distance from several bus services along Anzac Parade and approximately 215m walking distance of a light rail stop (Kensington). The bus routes include routes 302, 303, 348, 370, 391, 392, 393, 394, 395, 396, 397, 399, L94, M10, X92, X94, X96, X97 and X99 which provide access to the city, Redfern, Leichhardt, Eastgardens, Bondi Junction, Coogee, Maroubra Beach, and other surrounding suburbs. The Kensington Light Rail stop provides access to the city, UNSW Anzac Parade and Kingsford.*

*The bus and light rail provide connections to several railway stations, with the primary station being Central Railway Station which provides connections across metropolitan Sydney.*

- e. *The need for motorcycle parking is reduced given that the site is ideally located within the vicinity of various off-road and on-road cycleways.*

*The emergence of bike sharing schemes will assist in providing residents the ability to travel short distances throughout the area without the need to personally own a bicycle.*

- f. *The nature of the development, being affordable housing, in conjunction with the proximity of UNSW suggest that a high proportion of lodgers will be students attending the university. UNSW is located approximately 850 metres south of the site (11-minute walk), thus any students attending the university can easily walk or utilise the aforementioned public transport network and active travel routes to and from UNSW, thereby reducing the parking demand of the development.*

- g. *The subject site is also located within proximity of other alternative modes of transportation, being car and bicycle share services. These alternatives are summarised as follows:*

- *Car Share services can provide an economic alternative to privately owned vehicles. Currently there are five (5) GoGet Car pods located within optimal walking distance, with the closest on Duke Street, near Anzac Parade. This GoGet pod is located approximately 224 metres northwest (4-minute walk) of the subject site.*
- *In addition, the existing carparking space on the site will be designated as a car share space, owned by the development. Without having to walk to the nearest pods, there will already be a car share vehicle for residents to use.*

- h. *It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.*

- i. *The proposed development meets the (assumed) objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below).*

- j. *The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:*

- a. *The proposed boarding house will deliver affordable housing (1.3d);*
- b. *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses(1.3c); and*
- c. *The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3g).*

*It is noted that in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:*

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant*



*development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development has no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

*As outlined above, there are sufficient environmental planning grounds to justify contravening the development standard.*

Assessing officer's comment: A response to the applicants environmental planning grounds is contained in the point 1 above. In conclusion, the applicant's written request has NOT 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 motorcycle development standard was carried out earlier. AN assessment against the objectives of the R3 zone medium density residential is provided below:

Applicant:

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R3 are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposed boarding house will deliver affordable housing in a density which is compliant with the maximum floor space ratio for the site.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed boarding house will contribute towards the variety of available housing types in the locality.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective is not relevant to the proposal.

- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*

The proposed development retains the existing dwellings to the street frontage which will contribute to the existing and desired future character within the Racecourse Precinct Heritage Conservation Area. The non-provision of motorcycle parking has no impact on the character of the development or the streetscape.



- *To protect the amenity of residents.*

The variation to the motorcycle parking provision in the ARH SEPP will not significantly impact on the amenity of residents given that residents have easy access to services and facilities in the area, multiple public transport options, access to a dedicated car share scheme on the site, additional bicycle parking spaces over those required by ARH SEPP and other transport options in the area including GoGet car scheme pods and a variety of cycleways.

- *To encourage housing affordability.*

The proposed boarding house will deliver affordable housing. The proposed variation will ensure the proposal can be delivered.

- *To enable small-scale business uses in existing commercial buildings.*

This objective is not relevant to the proposal.

### **Assessment against objectives of R3 zone**

#### Assessing officer's comment:

There are no major concerns having regard to the majority of the objectives of the R3 medium density zone being met except for the objective point *to protect the amenity of residents* in so far as the shortfall in motorcycle parking demand has not been adequately quantified and for the reasons outlined assessment officer's comments under point 1 of this clause 4.6 assessment.

The development is inconsistent with the objectives of the motorcycle development standard and the R3 zone. Therefore, the development will not 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 minimum motorcycle space standard will not allow for the orderly use of the site and there is a public benefit in maintaining the development standard in this instance.

### **Conclusion**

Based on the above assessment, it is considered that the requirements of Clause 4.6(4) have NOT been satisfied and that development consent may NOT be granted for development that contravenes the motorcycle space development standard.

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

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

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative

provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

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

## 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally does not satisfy certain key objectives and controls of the Randwick Comprehensive DCP 2013 relating to shortfall in car parking, substandard car space provided and character shortfall in relation to the proposed rear setback, and poor amenity. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposal will result in detrimental social or economic impacts on the locality by virtue of the increased on-street parking demand created by the significant shortfall in parking resulting from the proposed change of use from low density residential to boarding house use.</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 does not have sufficient area to accommodate the proposed land use for a boarding house and associated structures noting that it results in a significant shortfall in car and motorcycle parking. Therefore, the site is considered unsuitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and will result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to not be in the public interest.

### 9.1. Discussion of key issues

#### Car Parking

Clause 29 (2) of SEPP ARH sets out standards that cannot be used to refuse consent which are taken to be minimum standards envisaged by SEPP ARH. Clause 29 (2) of SEPP ARH provides as follows:

*“(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:*

*(e) parking if:*

- (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and*
- (ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and*
- (iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and*
- (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,”*

The proposed development will not be carried by or on behalf of a social housing provider and as such clause 29(2)(e)(ii) of ARH SEPP envisages the proposed development to provide parking at a rate of 0.5 parking spaces for each boarding room or 1 space for every 2 boarding rooms. Having regard to the 20 rooms and a manager's room proposed, a minimum of 11 car parking spaces is required for the proposal. Only 1 substandard dimensioned car share space is provided.

As indicated in the comments provided by Council's Development Engineer, no details provided on the management and operation of the 'car share space' noting that a letter of support from a car share operator is not provided with the development application. The development falls short of the minimum envisages by clause 29(2)(e)(ii) by 10 spaces even if the small sized car space is accepted. The significant departure in the provision of onsite car parking spaces will result in the use of on-street parking to service the development.

#### Motorcycle parking

The development application must be refused because the proposed development does not provide adequate motorcycle parking and in that regard, does not comply with the standards in section 30(1)(h) of SEPP ARH.

Clause 30(1)(h) of SEPP ARH sets out the following relevant standards for boarding houses:

#### *30 Standards for boarding houses*

- (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following—*
  - (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.”*

The development application contains 20 boarding rooms, which requires the provision of 10 motorcycle spaces pursuant to section 30(1)(h) of SEPP ARH. The proposed development provides nil motorcycle spaces falling short of that required pursuant to section 30(1)(h) of SEPP ARH. The Applicant has submitted a written request pursuant to clause 4.6 of RLEP 2012 seeking to justify the contravention of the development standard in section 30(1)(h) of SEPP ARH. For the reasons outlined in the clause 4.6 assessment, the Applicant's written request under clause 4.6 of RLEP 2012 has not adequately addressed the following matters required to be demonstrated:

1. that compliance with the development standard in clause 30(1)(h) of SEPP ARH is unreasonable or unnecessary in the circumstances of the case, and

2. that there are sufficient environmental planning grounds to justify the contravention of the development standard in clause 30(1)(h) of SEPP ARH

### Landscaping

The proposal should be refused because the proposal provides insufficient landscaped area envisaged for this type of medium density residential development. As there are no landscape controls provided as part of the SEPP ARH (except for a landscaped treatment of the front setback), or in Part C4 of the RDCP, the landscape controls in Part C2 of the RDCP are used as a guide as it directs levels of landscaping for medium density residential development in the R3 medium density residential zone in which the site is located. Pursuant to 2.2.1 of this part of the DCP, a minimum of 50% of the site area with minimum dimensions of 2m is required as landscaped area for medium density residential developments. A review of the landscape plan an area of 276.8m<sup>2</sup> is identified which is capable of being considered as landscaped area. This is equivalent to 45% of the site area and represents a percentage variation of 10%. This reflects an overdevelopment of the site.

### Setbacks

As there are no setback controls provided as part of the SEPP ARH, or in Part C4 Boarding houses of the DCP, the setback controls in Part C2 medium density residential of the DCP is used as a guide. Pursuant to 3.4.3 of this part of the DCP, the minimum rear setback is 15% of allotment depth which equates to 6m. The proposal provides a rear setback of 5m falling short of the expected rear setback. It is also noted that the adjoining sites contain medium density residential forms of development with setbacks greater than that proposed. It is also noted that if a medium density residential development were subject to the SEPP 65 provisions in the ADG for residential flat buildings that the design criteria would require a 6m setback from the boundary.

The objectives in the DCP require that the rear setback consider the orientation of the site and respond to environmental needs of the surrounding area *to ensure adequate separation between buildings for*

*visual and acoustic privacy, solar access, air circulation and views.* In this instance, the shorter rear setback results in additional unnecessary overshadowing of the southern neighbour's property.

Given the site depth of there is no reasonable planning justification for not offering a consistent rear setback with the adjoining noting also that the proposal results in insufficient landscaped open space relative to medium density residential development expectations.

## **10. Conclusion**

That the application to partially demolish the existing semi-detached dwellings at the rear to accommodate the construction of a three-storey boarding house comprising 20 boarding rooms, 1 on-site Manager's room, communal room, provision of 1 car-share parking space in the frontage, 12 bicycle spaces, communal outdoor space, landscaping and associated works (variation to motorcycle parking) within a Heritage Conservation Area be refused for the following reasons:

1. The proposal does not comply with the State Environmental Planning Policy (Affordable Rental Housing) 2009 in that the proposal does not satisfy the character test given failure to comply with key envelope site planning controls such as rear setback, car parking and motorcycle parking that results in the development not being in accordance with the desired future character.
2. The proposal does not comply the development standard under clause 30(h) Motor cycle parking in the SEPP ARH, and the variation is not in the public interest as the development is not in accordance with the relevant objectives of the standard and the R3 zone.
3. The proposal does not satisfy the requirements under clause 4.6 - Exceptions to Development Standards in the SEPP ARH, in that the request for the variation to the motorcycle parking is not well founded.
4. The proposal does not comply with the Clause 29(e) controls for car parking.

5. The proposal does not comply with the relevant objectives and development controls of the Randwick Comprehensive Development Control Plan 2013 with regards to:
- Rear setbacks,
  - Landscape open space
  - Parking
6. The proposal is not in the public interest as the boarding house proposes significant deviations from both the numerical and merit-based controls.

D51/22

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Design Excellence Panel

*The following comments comprise the DEP comments as well as assessment officers comments provided to the applicant by way of a request to address issues to address with the application:*

#### **DEP PANEL COMMENTS**

*This is the first time the panel has reviewed a proposal for this site, which is being lodged under the Affordable Housing SEPP, allowing up to a 1.4:1 FSR (0.5:1 bonus on top of the 0.9:1). The current proposal is at 0.9376:1, which is only slightly above the base/permissible FSR of 0.9:1. The three-story boarding house proposal sits within the 12m height plane, and is located between two existing residential flat buildings, which stand between 3 and 4 storeys.*

*It's been noted that the design has been progressed to its current position following feedback from Council at a Pre-DA meeting. The Panel support the retention of the existing semi-detached houses at the street frontage and recognise that their retention will make it impossible to provide additional car parking to support the proposed dwellings.*

*Assessment comment: In general, Council's position is that the retention of the dwelling is a site constraint and that the development should respond appropriately to the site constraints. Whilst Council's Development Engineer has as yet not provided comments, it is generally considered that significant parking shortfalls are extremely difficult to justify. Therefore, it is recommended the applicant explore ways of minimising the shortfall and demonstrate that parking isn't able to be provided at basement level, providing motorcycle parking in the front adjacent to the car space.*

*Since provision of the Engineers comments and ways to reduce the parking shortfall have not been supported by Council's engineer the applicant was advised that Council would not accept amended plans and afforded the opportunity to withdraw the application.*

*The Panel are familiar with the local area and the relationship with the K2K corridor and opportunities arising from its proximity to the Light Rail, UNSW, and other local destinations.*

#### **Principle 1: Context and Neighbourhood Context**

- *The site is located within the Racecourse Conservation Area, and the retention of the existing semi-detached dwellings is supported by the Panel as they reflect the scale and character of development that once lined Doncaster Avenue.*
- *The proposal sits within the height control (12m) and contextual references the scale of the two adjoining residential flat buildings, with the exception of the rear setback.*

*Assessment comment: the rear setback should be increased to be consistent with the envisaged rear setback for medium density residential development in the area. Options may include reducing the internal floor area of each of these rooms to no more than 12sqm and or converting some rooms into double rooms (of course ensuring no room is greater than 25sqm excluding kitchens and bathrooms). Please note that double rooms may be provided at the rear to both minimise the shortfall in parking as well as respond more appropriately to the shortfall in parking.*

- *The proximity of the site to the K2K precinct and Anzac Parade Corridor, UNSW and other amenities make the site well suited for this form of accommodation and may support the applicant's approach to transport – addressing the shortfall in parking provision. The panel suggests an on-site bike storage and maintenance facility, supplemented by additional car share spaces in the local area.*



Assessment comment: the carshare space cannot be relied upon to sufficiently address the shortfall in parking as reviewed by the Manager of Development Assessment. It is recommended that other measures be explored such as reducing the floor area, number of rooms, providing motorcycle parking and increasing the rear setback.

- *The panel suggest further analysis of the streetscape and the visibility/contribution the rear addition will make to the character of Doncaster and Todman Avenues. Its likely that the proposed 3-storey addition can only be seen when viewing the property front-on, which may support alternate approaches to the architecture*

Assessment comment: see further comments namely in Aesthetics.

### **Principle 2: Scale and Built Form**

- *The panel support the retention of the existing semi-detached residences at the front of the property, and the clear delineation (separation) of the new addition from the existing structure. Whether this requires a mimicry of gable and roof-forms between the new and existing built elements is addressed below in 'aesthetics'.*
- *The proposed rear setback extends beyond the adjoining properties and should more closely align with 96 Doncaster to the north. This will lessen the impact on 102 Doncaster to the south in terms of overshadowing and enclosure.*

Assessment comment: An increased rear setback will achieve consistency with that envisaged in the Medium Density residential zone. Please note also that Council's Heritage planner does not raise any objection to the proposed architectural language.

- *Review internal configuration to straighten the central corridor so that a clear line-of-sight can be achieved between the front and rear gardens. This will require changes to the layout of G.02/04/06*

Assessment comment: the reference to room number appears to be a typo and should refer to G.01 as requiring internal reconfiguration; please note that a minimum of 12sqm would be required for this room. The panel suggests investigating G.06 be re-assigned to an internal bike store and workshop, to address the short-fall in parking on site which in the opinion of the assessment officer is not sufficient in its own right or at least has not been adequately quantified as well as that of motorcycle parking. This internal space might also be able to accommodate a bin store, relocating them away from the southern boundary secondary entrance and away from the accessible room G.01. Council considers these comments as beneficial in many respects.

### **Principle 3: Density**

- *The proposal represents an efficient use of a site that's constrained by the retention of the existing semi-detached houses, Conservation Area controls and its size. Given the location of the site and its proximity to the Anzac Parade Corridor and local services the Panel supports this density proposed, subject to the matters outlined in this report being addressed.*

Assessment comment: The density is not supported on the basis that an increased rear setback is warranted, internal reconfiguration of G.01 to provide a visual through link from front to rear and converting G.06 into a bike and bin store.

- *The density and number of proposed residents (21) on such a constrained site makes it difficult to provide sufficient open space and amenity on site. The Panel suggest further investigation of the roof-level to support communal open space, which takes the pressure of the marginal ground floor spaces around the edge of the site – which would be better assigned to the ground floor units.*

Assessment comment: Council's does not recommend that the roof be used for open space as it is considered it will likely result in adverse visual and acoustic privacy impacts on

neighbouring properties which if sought to be addressed via physical structures it would not result in additional bulk and massing along elevations).

#### **Principle 4: Sustainability**

- *The retention of the existing buildings on site should form the basis of a broader sustainability strategy that includes.*
  - *Green Travel Plan or similar to address the shortfall in on-site parking, whilst leveraging the proximity to public transport*
  - *Passive cooling and temperature control; noting A/C condensers aren't shown, nor are ceiling fans. The Panel suggests the latter, with an allowance for the former (indicated on the plans if proposed)*
  - *On-site rainwater capture and re-use*
  - *Productive landscape areas to be maintained by residents*

Assessment comment: A green travel plan will not in of itself address the shortfall in parking; a multi-faceted approach is required including a reduction in the number of boarding rooms, increased rear setback, internal re configuration of G.01 to address the Panels comments under Principle 2; provision of motorcycle spaces and bike and bin storage in G.06;

#### **Principle 5: Landscape**

- *Landscape Plan by Conzept has been provided as part of the proposal. Due to the extent of site coverage the opportunities for useable open space for the 21 residents is limited.*

Assessment comment: an increased rear setback will improve usability of communal open space.

- *See comments above relating to the potential of a roof communal area, and reassignment of the ground floor spaces to the ground floor units at the rear, and along the northern and southern boundaries.*

Assessment comment: Council does not support this.

#### **Principle 6: Amenity**

- *See comments above relating to the provision and designation of communal and private open space at the roof and ground levels respectively*

Assessment comment: not supported

- *See comments above relating to the relocation of the bin store away from lobby entrance and southern boundary into a contained room*

Assessment comment: supported

- *Increasing the rear setback will improve solar access to the rear of 102 Doncaster – though the massing view studies indicate the northern elevation receives good solar access throughout mid-winter.*

Assessment comment: supported however it is added that an increased rear setback will be more consistent with the prevailing and likely rear setbacks envisaged in the medium density zone.

- *The location of the accessible toilets projecting into the rear garden compromises the usability and amenity of this space. Consideration should be given to bringing these elements into the building and having bedroom/living areas facing the larger open space.*

Assessment comment: this recommendation does not impact on G.01 due to the recommendation to provide a sightline between the entry and the rear yard. Room G.02 however should be reconfigured to improve usability and amenity of the rear yard.

### **Principle 7: Safety**

*No comments in relation to safety.*

### **Principle 8: Housing Diversity and Social Interaction**

*The proposal for 21 residents on such a constrained site places considerable pressure on existing amenity, which is already managing the growth and densification envisaged in the K2K Strategy. Greater effort needs to be made to support the needs of the proposed residents on-site.*

### **Principle 9: Aesthetics**

- *The Panel appreciates that the approach to the site has changed from the Pre-DA to lodgement in response to Council's feedback (specifically relating to heritage issues and the retention of the existing semi-detached houses). The site layout and massing clearly delineate the retained from the new addition, but this concept isn't carried through to the architecture, which appears to mimic the geometry of the existing gables in the roof form of the rear block. The rigid adherence to the heritage style for the addition compromises the opportunity of the site and diminishes the authenticity of the retained semi-detached houses.*
- *This approach may be revisited as part of a site-wide review that includes additional communal space on the roof – which would require a flat-roof and a greater juxtaposition between the old and new.*

Assessment comment: flat roof for use as communal open space isn't supported. It is noted that the site conditions allow for a maximum external wall height of 10.5m which is around 1.02m higher than the current proposed development and those structures located on the roof will invariably exceed the maximum external wall height control.

## **SUMMARY AND RECOMMENDATIONS**

*The Panel would like to see the revised design and the response to the points raised in this report, and other matters raised by Council.*

Assessment comment: Council advises that a meeting be held to discuss the above issues following receipt of comments from Council's Development Engineer and Heritage Planner.

A meeting was held with the applicant, and they were advised to submit sketches of amended scheme for Council review. Subsequent sketches of schemes were not supported on development engineering grounds.

### **1.2. Development Engineer**

The following initial comments were provided by Council's Development Engineer:

*Development Engineering issues comments:*

#### **PARKING ISSUES**

##### Vehicle Parking

*Under Clause 29 (2) (e) under standards that cannot be used to refuse consent in the SEPP Affordable Housing, a consent authority must not refuse consent on parking grounds if.*

- (i) *in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and*

- (ii) *in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and*
- (iia) *in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and*
- (iii) *in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,*

*For the subject proposal comprising of 20 boarding rooms plus 1 manager's room and not being made by a social housing provider then adopting the above rate would require the following parking provision.*

*Parking Required           = 0.5 x 20 + 1 space for manager  
                                      = 11 spaces*

*Parking Proposed         = 1 space*

***Parking Shortfall         = 10 SPACES***

*Under Clause 29(4) of the SEPP some variation to the parking requirement may be justified when considering the site's location within 400m of Kensington Town Centre and a light rail station. In this case however the variation represents too great a departure from the SEPP standard and is not supported by Development Engineering.*

*The Traffic and parking study has not provided any supporting data on what the actual parking demand of the boarding house will be and has only justified the shortfall by its proximity to public transport options.*

*It should be noted that the parking provision would also not comply with the DCP rate of 1 per 5 (5 required inc. manager) or even the old parking DCP rate of 1 per 10 (3 required including manager).*

*It should also be clarified if the provision of 2 accessible units would require the provision of an accessible carspace.*

#### *Carshare*

*The application has not provided a letter of support from a carshare provider in support of the carshare space and has not detailed how the carshare space will be managed. This shall be provided as part of the DA documentation to ensure the carshare space is feasible.*

*Consistent with previous applications Development Engineering will only support a credit of 3-5 spaces for 1 carshare space, subject to the carshare space being feasible.*

#### *Motorbike & Bicycle Parking*

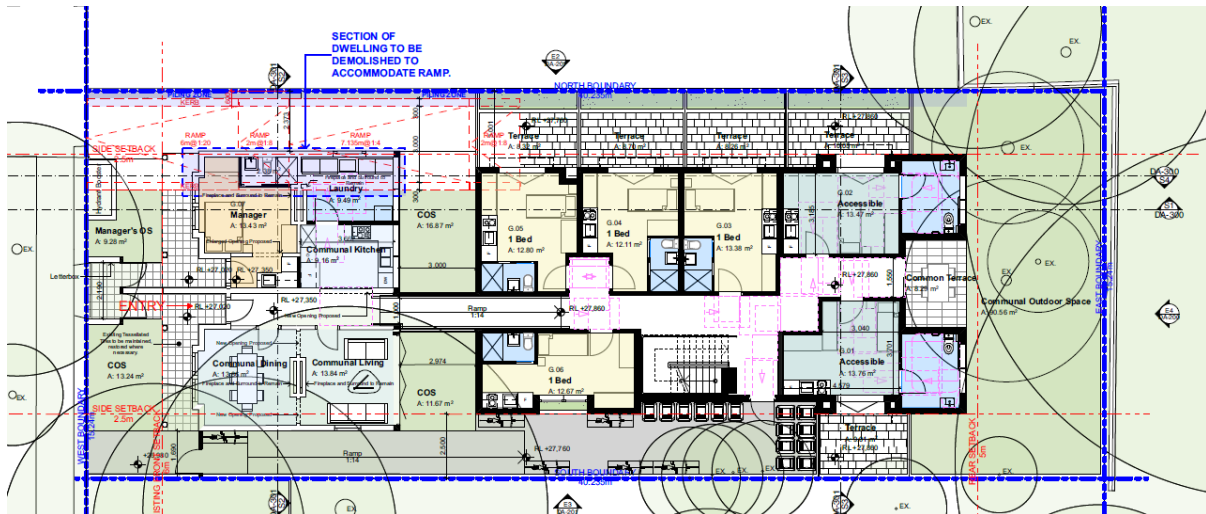
*The Affordable Housing SEPP states in regulation 30(h) that consent authorities must not consent to development unless at least one parking space is provided for a bicycle and one for a motorcycle for every 5 boarding rooms.*

*As the number of boarding rooms is 20 this will require the provision of 4 bicycle and 4 motorbike spaces.*

*The submitted plans demonstrate compliance with the bicycle requirement (12 provided) but have not provided any motorbike parking. This is a compulsory requirement under the SEPP and the applicant has not provided suitable justification to vary this clause in this instance.*

**Assessment comment:** Subsequent sketches were submitted to Council however the Development engineer did not support the outcomes in relation to accessibility of carspace, shortfall in motorcycle

parking and methods to mitigate the shortfall in parking. It is noted that basement parking was not able to be provided as it would require demolishing a substantial portion of the northern western section to accommodate ramping to the basement (in the image below the top left area is that requiring demolition for basement ramping)



Section of building to be demolished to provide for basement ramp.

#### 4 Options presented to Council for consideration:

The applicant provided the following 4 options:

1. Option 1 with 2 tandem car spots, no motorbikes and 8 bicycles. The car spaces would be utilised by two share cars, owned and operated by the facility.
2. Option 2 with no car spots, 4 motorbikes and 8 bicycles. This scheme is compliant with motorbikes and bicycles but would require go-get off-site parking, which does exist in the locality and could be amplified.
3. Option 3 is our preferred option. It has the 1 car share, 6 bicycles and changes a ground floor room into a motorbike garage with 4 motorcycles.
4. Option 4 is the same as option 3 but has a second car share. The car space has been moved forward so that the driver's door might open into the communal space. Again, the car spaces would be utilised by two share cars, owned, and operated by the facility.

#### Engineer assessment of the four options:

- In regard to the options, the following comments are provided:
- 
- *Option 1:*
- 
- *No motorcycle spaces won't be supported*
- *Car space requires 3m enclosed on both sides- propose 2.37m wide carspace- see option 4 comments below.*
- 
- *Option 2*
- 
- *No car spots, won't be supported*
- *4 motorbikes and*
- *8 bicycles.*
- *Off-site car share space.*
- 
- *Option 3*



- - 1 on-site car share,
  - 6 bicycles and
  - Motorbike garage with 4 motorcycles separate access
  - Reduces boarding rooms down to 19 from 20 Note: Managers room provided yet not required).
- 
- *Option 4 is the same as option 3 but has a second car share. The car space has been moved forward so that the driver's door might open into the communal space. Again, the car spaces would be utilised by two share cars, owned and operated by the facility.*
- - Same as option 3 except 2 spaces
  - Carspace widths will not work – the narrower width is only supported for the car's hood that doesn't have doors that open to the sides.
- 
- Councils Development Engineer comments below doesn't support either option 3 or option 4 and Planners consideration for installation of a car lift:
- 
- Under the AHSEPP both options would suggest a minimum parking provision of 10 spaces. A small variation would be considered but the proposed parking provision of only 1 space (option 3) or 2 spaces (option 4) will be totally inadequate to meet the needs of the proposed development
  -
- Both options propose separate driveways for motorbike and vehicle parking. This is not supported as it will lose an additional on-street parking space further exacerbating the parking shortfall. We also do not support providing what is essentially a pram crossing to access motorbike parking. Motorbike and vehicle parking should be accessed from the same vehicle crossing.
  -
- Tandem parking is generally not supported by Development Engineering for Boarding Houses under any circumstances (option 4).
  -
- The existing carspace/driveway does not meet current Australian Standards for carspaces (including small carspaces) and in consideration of the likely intensification of use of the carspace (if a carshare space) it is not considered suitable for the proposed development except perhaps for use by the manager only.
- The narrow width of the driveway also excludes support for a car lift or an access driveway to basement parking as it will not meet the minimum clear width of 3m (for the lift) or 3.6m (for access driveway). Any basement or lift would also be subject to flooding concerns as the front of the site is affected by flood depths of approx. 0.3m for the 1% AEP (1 in 100yr) flood.

### 1.3. Heritage planner

The Heritage planner provided the following assessment comments:

#### **The Site**

The site is within the Racecourse Precinct heritage conservation area and is occupied by a single storey semi-detached pair. The dwelling retains much of its original Federation character including face brick walls and chimneys, timber windows, shingled gables with fretwork and turned timber detailing, turned timber verandah posts, cast iron valances, arched entry door openings, and timber picket fencing. The original roofing to the front plane of the roof has been replaced with cement tiles, with corrugated iron roofing remaining on the side and rear roof places. In terms of Aesthetic significance, the Statement of Significance for the heritage conservation area notes that "the residential properties on the eastern side of Doncaster Avenue form a straight street frontage almost a kilometer in length, with a predominantly Victorian and Federation period character. ... The most common building types



are one storey Federation period detached and semidetached houses. These mostly stand on narrow lots and have consistent setbacks and verandah and roof designs.” To the west of the site on the opposite side of Doncaster Avenue are the Kensington Public School buildings, listed as a heritage item under Randwick LEP 2012. The NSW Heritage data base sheet for the school buildings identify their significance as a “Fine turn-of-the-century school building. Features some outstanding decoration. Part of the local history and streetscape. Essentially unaltered despite additions.” To the north of the site is nos.86 – 92 Doncaster Avenue, a Victorian mansion also listed as a heritage item. Further to the north is nos.68 – 82 Doncaster Avenue, a detached cottage group also listed as a heritage item.

To the south of the site, development predominantly comprises single storey and two storey dwellings, with the exception of the four-storey residential flat building immediately to the south, approved in 1982, well before the gazettal of the heritage conservation area in 1992. To the north of the site, development also predominantly comprises single storey and two storey development, apart from the three-storey residential flat building also approved in 1982. The two-storey development on the site of no.86 – 92 Doncaster Avenue was approved in 1993.

### **Background**

PL/50/2019 proposed to demolish the existing cottage and to construct a new four storey boarding house. Concerns were raised that the submission did not provide any information to justify the demolition of the contributory building on the site. It was noted that the streetscape predominantly comprised single storey and two storey buildings, and there were concerns that the proposed four storey flat roofed boarding house building was not respectful of and be sensitive to its neighbours, and in keeping with the street’s established setbacks, scale, form and materials.

### **Proposal**

The current application proposes to retain the front sections of the semi-detached pair, and to demolish their rear sections to allow for the construction of a three-storey boarding house. The front section of the original dwellings is to be adaptively reused to provide a manager’s flat, laundry, communal kitchen communal dining area and communal living area. The ground level is to comprise 6 rooms including 2 accessible rooms. First and second floor levels are to comprise 7 rooms per floor. The existing carport to the north side of no.98 Doncaster Avenue is to be replaced by an open car space. It is unclear whether changes are proposed to the existing front fence.

### **Submission**

The application has been accompanied by a Heritage Impact Assessment prepared by Urbis. The HIA includes a Site Description, Historical Overview, Brief Comparative Analysis, Assessment of Heritage Significance and Assessment of Heritage Impact. It appears that the site was part of an 1891 subdivision, but the semi-detached pair were not constructed until between 1903 and 1906.

*In terms of Comparative Significance, the HIS argues that within the Racecourse HCA and within Kensington, there are numerous other examples of Victorian and Federation period dwellings which are located within cohesive streetscapes.*

*In terms of Significance, the HIS considers that although the dwellings are considered to be consistent with the character of many of the dwellings along Doncaster Avenue within the Randwick Racecourse HCA, the dwellings have been physically and visually isolated from the historic streetscape along Doncaster Avenue. The HIS argues that the contributory value of the dwellings to the character of Doncaster Avenue has been diminished due to the domination of the streetscape by later apartment buildings to the north and south, and that the subject dwellings now present as an isolated pair outside of their original context. In relation to archaeology, the HIS advises that assessment of the archaeological potential of the site is beyond the scope of this report. The existing structure on the site are the only known structures to have been erected on the site, and as such, the HIS considers the historical archaeological potential of the site to be low.*

*The HIS concludes that:*

*The proposed works have been assessed to have an acceptable impact on the subject site, the Racecourse HCA and the heritage items located in close proximity to the site. Key aspects of the proposal assessment are listed below:*

- *The primary built form of the semi-detached dwellings is proposed to be retained, including the front façade and side returns with all original detailing. Internally, the original layout of the front principal spaces of the dwellings will continue to be retained and readily interpreted. Where new or modified openings are proposed within these principal spaces, bulkheads and/or nibs are retained. Original internal fabric, including skirting boards, architraves, doors, fireplaces, and surrounds will be retained. All original exterior fabric of the semi-detached dwellings, including timber detailing, iron fretwork, doors, windows, leadlight, moulded detailing, and tessellated tiles are to be retained and restored.*
- *The proposed new rear addition has been designed to be substantially physically separated from the retained principal front rooms of the semi-detached dwellings by the adoption of a glazed single-storey link with communal landscaped areas in between the old and new.*
- *The proposed new three-storey addition has been designed to complement the form, detailing, colours and materials of the semi-detached dwellings. This is expressed in the double gable roof form, traditionally proportioned openings, use of timber like detailing to gables, symmetrical overall form, and the use of red brick and matching colour scheme to the semi-detached dwellings. Although the proposed addition is two storeys higher than the existing dwellings, it is set 3 metres to the rear with side setback maintained. The overall height of the addition is in keeping with the three and four storey apartment buildings located adjacent to the subject site.*
- *The subject site will continue to contribute to the Racecourse HCA due to the retention of the primary built form of the semi-detached dwellings. The proposed rear addition is set substantially back from the front boundary of the subject site and will form a backdrop to the semi-detached dwellings. Additionally, the proposed rear addition will not impact on any significant views to or from the Randwick Racecourse which is located directly to the east of the subject site.*
- *The proposed works will not impact the Kensington Public School to the west of the subject site, nor the Victorian Mansion located at 86-92 Doncaster Avenue to the north of the site. The proposed new addition, being only three storeys in height, is consistent with the developments either side of the subject site. No views to or from the new addition and the Victorian Mansion will be possible. As Kensington Public School is located on the opposite side of the street to the subject site and the new addition being located to the rear of the subject site, there is substantial separation between the two sites which will thus not impact the school.*

*The HIS makes recommendations in relation to archival recording and salvage of original building fabric.*

### **Controls**

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

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

*The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties. These Objectives and Controls generally relate to alterations and additions to dwelling houses, rather than to medium density development, but have some relevance to the proposal. In relation to Infill buildings, clause 1.10 of the DCP requires that a new building within a heritage conservation area must respect and be sensitive to its neighbours and should be in keeping with the street's established setbacks, scale, form and materials. In accordance with the Burra Charter principles, an infill building should however be clearly seen as a new building and not attempt to replicate original buildings or copy traditional detailing.*

The DCP includes Objectives and Controls applying to development in a heritage conservation area, including Design and character; Scale and form; Detailing; and Materials, finishes and colour schemes. In relation to Design and character, Clause 2.2 of the DCP includes a Control that requires that the design of alterations and additions must complement the existing building in its scale, form and detailing, but that it should be possible to distinguish the new work from the old. In relation to Scale and Form, Clause 2.3 of the DCP includes Controls that in streetscapes where development is of a consistent single storey height, upper floor additions are appropriate only if not visible from the street. The DCP includes further Controls that additions must not visually dominate, compete with or conceal the original form and massing of the existing buildings, and must not contain any major or prominent design elements which compete with existing architectural features or detailing. The DCP notes that any upper-level addition should be set well to the rear to minimise streetscape visibility and retain the integrity of the main roof, and preferably use pavilion-type forms with a lower scale linking structure between the original building and any double storey addition. If a pavilion-type form is not suitable or desirable, an upper floor addition may be acceptable, set well to the rear of the building to minimise impact on the main roof and to minimise streetscape visibility. In relation to Detailing, clause 2.5 of the DCP includes an Objective of encouraging the reinstatement of original elements and detail. The DCP includes Controls that alterations and additions should incorporate new doors and windows which are compatible with the position, size, and proportions and detailing of original windows and doors and should adopt a level of detailing which complements the heritage fabric and should (in general) be less elaborate than the original.

In relation to Garages, Carports, Car spaces and Driveways, the DCP includes a Control that open hard stand carspaces may be provided forward of the building line, but must be located adjacent to a side boundary, and generally not be greater than single car width. Another Control requires that open hard stand carspaces must not dominate the setting of the building in terms of loss of planting, fencing or retaining walls. In relation to Fences, clause 2.10 of the DCP includes a Control that requiring retention, repair or reconstruction of original fences and retaining walls where possible.

## Comments

### **Part demolition of existing cottages**

The original form of each half of the semi-detached pair comprises 3 bedrooms, bathroom, and living room under the main pitched roof, with a skillion roof falling towards the rear over the secondary rooms behind. The living rooms are recessed from the side walls with glazed four paneled doors with side lights and fanlights facing a side verandah. The front part of the pitched roof comprises a cross ridge with side gablets and a gabled front verandah to each half of the pair, while the rear part of the roof comprises two parallel hipped roofs with a central box gutter. Due to subsequent changes to each of the dwellings, the original layout under the rear skillion, including dining room, kitchen and laundry is unclear.

Externally, the pair retain face brick walls to the front elevation, as well as shingled gables, turned timber verandah posts, ironwork valances, tessellated tiles to verandahs and front paths, and paired timber windows with moulded rendered sills. The roof planes facing the street have had original roofing replaced with cement tiles, other roofs are in corrugated metal. Both dwellings retain front and rear brick chimneys. Face brickwork to the side elevation of no.98 has been retained, while the face brickwork to the side elevation of no.100 has been painted. Original timber double hung windows are generally retained. The rear part of the rear skillion has weathertex cladding and aluminium framed glazing. Early front fences comprise half round timber pickets and woven wire gates.

Internally, the pair retain much original timberwork and plasterwork. Original timberwork includes four panelled timber doors, many with fanlights, as well as decorative architraves, skirtings, and picture rails. Original plasterwork comprises moulded cornices, decorative ceiling roses and decorative arches to the hallways. No.98 is less intact and no.100 more intact. A number of original ceilings to no.98 have been replaced with plain plasterboard ceilings and cornices, including the living room, the hallway and at least some of the bedrooms. Original ceilings to no.100 have been replaced within the rear dining and kitchen area.

*Fireplaces with simple decorative timber surrounds are generally retained but have been blocked.*

*The semi-detached pair on the subject site is highly contributory to the heritage significance of the Racecourse Precinct heritage conservation area through its scale, form, materials and detailing. The proposal will retain the two front rooms (bedrooms) under the main pitched roof but will remove the bathroom and two rear rooms (third bedroom and living room) and, as well as the rear skillion. The proposal will remove around 50% of the main pitched roof, and some significant internal and external fabric related to the third bedroom and living room. The proposal will however retain the key external features which contribute to the conservation area streetscape including front gables, side gables, front chimneys, front verandah detailing and front and side windows to the first and second bedrooms. It is noted that only the front plane of the roof and the adjacent side planes of the gables are tiled, while all other roofs are in painted corrugated iron. The front half of the roof includes a cross ridge which screens the rear half of the roof from the street. The proposal will retain a three-dimensional presentation of the buildings to the street and will result in a reasonable ratio of retained fabric to new fabric, so that the additions will not unreasonably dominate, compete with the retained form and massing of the existing buildings. A consent condition should be included requiring archival recording of the existing semi-detached pair.*

### **Changes to the front section of the cottages**

*The front two rooms of each of the cottages comprise bedroom accommodation. The application proposes to use the former bedrooms and hallway of no.98 as a manager's flat with bathroom and kitchenette, and communal kitchen and laundry. The application proposes to use the former bedrooms of no.100 as a communal dining room and communal living area. Externally, the proposed adaptive reuse will retain original external openings and provide of new glazed doors to the communal living area facing the new courtyard. It appears that the front doors are required to open outwards for fire egress reasons, and a consent condition should be included that the existing front doors be reused in a new frame. The proposed skylights in the rear plane of the roof will have no streetscape visibility. A consent condition should be included however requiring that the skylights be carefully installed to minimise damage to the original ceiling in the communal living area.*

*Internally, the proposed adaptive reuse will involve provision of enlarged openings, removal of existing walls and construction of new walls. The managers flat will include insertion of a new bathroom within the first bedroom and creation of an enlarged opening to create a kitchenette within the front half of the former hallway. The bathroom should be inserted so that the existing ceiling and cornice are retained by providing lower walls and ceiling to the new bathroom. An appropriate consent condition should be included. The communal kitchen and laundry will include construction of a new wall between the laundry and kitchen and removal of an existing wall between the second bedroom and the rear half of the former hallway. These changes will result in loss of much of the original detailing including plasterwork and timberwork in these areas. In accordance with the recommendations of the HIS, consideration should be given to the reuse of any historic building fabric in a reasonably good condition, with salvaged building material surplus to the project transferred to an established second-hand building material dealer for recycling. The communal dining and communal living will involve creation of new openings between the two rooms. The proposal will retain the integrity and internal detailing including timberwork and plasterwork in 3 out of 4 of the original spaces in the retained front section of the dwellings. New and enlarged openings should match the height of existing door openings to allow existing ceilings in the managers flat, communal dining and communal living area to be retained. An appropriate consent condition should be included.*

### **Conservation works**

*The HIS advises that original intact external detailing on the retained portions of the semi-detached dwellings, including timber detailing, iron lacework, doors, windows, leadlight, moulded detailing and tessellated tiles to verandahs and pathways will be retained and restored. The HIS notes that all exterior detailing, including timber gables, bargeboard, posts, windows, doors, iron lacework and moulded sills and corbels are to be repainted. Drawings incorporate similar notes on plans and elevations. The HIS notes that all existing non-original roofing material to semi-detached dwellings is to be replaced with new Marseilles terracotta roof tiles. The materials and finishes sheet however indicate that dark grey "Peak" glazed*



finish is proposed to the terracotta tiles. Further investigation is to be carried out into the original roofing to the cottages, so that authentic replacement in either slate, or unglazed terracotta tiles, can be carried out. There are no heritage objections to other materials and finishes which are proposed.

Photographs included in the HIS are not exhaustive but indicate a number of elements are in a deteriorated condition, including damaged and missing tessellated tiles to the pathway and cracking to internal plaster cornices. The Heritage section of the DCP encourages reinstatement of original elements and detail. Given the extent of the proposed development, it is recommended that a consent condition be included that a Schedule of Conservation Works be prepared for the retained portions of the cottages covering necessary repair and maintenance works to all building elements, including brickwork, rendered detailing, timberwork, metalwork and tiled surfaces. An appropriate consent condition should be included.

#### **Rear boarding house addition**

The rear boarding house addition will be separated from the front section of the cottages by a 3m deep courtyard with a corridor link. The front wall of the boarding house addition is set back around 12m from the line of the front gables of the cottages and around 15m from the front boundary.

The rear three storey boarding house addition is two levels higher than the existing cottages on the site and will be clearly visible in the streetscape. The addition however adopts a pavilion form with a link to the original building and is set well to the rear minimising its prominence in the streetscape and retaining the roof form over the verandah and the front two rooms. The use of wide overhanging eaves, projecting sunhoods as well as Juliette balconies at level 1, reduce apparent wall height of the side elevations and provide depth, modulation and articulation to the street elevation.

The rear boarding house addition has been carefully detailed to be respectful of and sensitive to the form, materials and detailing of the existing cottages, including use of rendered brickwork at the top of the building above a face brickwork base, use of vertically proportioned openings and contemporary gable detailing. The boarding house addition can be clearly seen as a new building and does not attempt to replicate original buildings or copy traditional detailing.

#### **Front fence**

The existing front fence comprises half round timber pickets and woven wire gates- no.100 has pickets of the same height, while no.98 are higher on either side of the bulky timber posts. It appears that the application proposes to replace the existing fence with a flat-topped picket fence, with new gates set back from the line of the fence. It is suggested that half round pickets be used for the replacement fence and that further detail of the fencing should be provided.

#### **Carspace**

An existing carport to the north side of no.28 is to be removed and replaced with an unroofed car space. The removal of the existing carport will reduce the impact of carparking provision on the existing cottages and the streetscape.

#### **Recommendation**

The following conditions should be included in any consent:

- A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council's Director City Planning, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture. Two digital copies (DVD or USB) of the archival recording is to be submitted to Council for deposit in the Local History Collection of Randwick City Library and Council's own records incorporating the following:
  - A PDF copy of the archival record incorporating a detailed historical

- development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs.
  - Digital copies of the archival photographs in JPEG and TIFF formats.
- It appears that the front doors to the original cottages are required to open outwards for fire egress reasons. The existing front doors be are to be reused in a new frame. Amended drawings are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.
- The proposed skylights in the rear plane of the existing roof are to be carefully installed to minimise damage to the original ceiling in the communal living area.
- The new bathroom in the manager's flat is to be inserted so that the existing ceiling and cornice are retained by providing lower walls and ceiling to the new bathroom. Amended drawings are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.
- Consideration should be given to the reuse of any historic building fabric in a reasonably good condition. For instance, there is an opportunity to salvage original timber skirtings, architraves, plaster cornices and ceiling roses, timber doors and windows. Salvaged building material surplus to the project may be transferred to an established second-hand building material dealer for recycling.
- New and enlarged openings within the original cottages should match the height of existing door openings to allow existing ceilings in the manager's flat, the communal dining area and the communal living area to be retained.
- A Schedule of Conservation Works be prepared for the retained portions of the cottages covering necessary repair and maintenance works to all building elements, including brickwork, rendered detailing, timberwork, metalwork and tiled surfaces. The Schedule of Conservation Works shall be prepared in accordance with the principles embodied in the Australia ICOMOS Burra Charter and the methodology outlined in J.S. Kerr's The Conservation Plan. This Plan shall be prepared by an architect suitably qualified and experienced in heritage conservation and shall be to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.
- The conservation policies and maintenance program outlined in the Schedule of Conservation Works are to be implemented in conjunction with the proposed development. An architect suitably qualified and experienced in heritage conservation shall be engaged to oversee the implementation to ensure the use of technically sound and appropriate techniques.
- Further investigation is to be carried out into the original roofing to the cottages, so that authentic replacement in either slate, or unglazed terracotta tiles, can be carried out. The new roofing to the cottages is to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building. Details of the proposed roofing are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.



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- *The new front fence is to use half round timber pickets to match the existing fence and the spacing of the timber pickets is to match the existing fence. Details of the design, height, materials and structure of the front fence and gates are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. Fencing and gates are to be compatible with the style of the dwelling and the streetscape character.*

Assessment comments: Subject to conditions there are no major concerns raised by the Heritage planner, noting that whilst the new building forms have the same roof pitch as the original dwellings, it does not "mimic" the character or detailing of the original buildings. Despite this, it is not considered that the site is capable of accommodating the proposed use on site noting the significant shortfall in parking and if parking were to be provided it would require vast amendments to the existing built form beyond that proposed as part of this DA.

#### **1.4. Environmental Health Officer**

Assessment comments: No major concerns raised subject to conditions.

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

# Clause 4.6 Variation Statement – Motorcycle Parking (Clause 30(1)(h) of ARH SEPP)

D51/22

### 1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of *Randwick Local Environmental Plan 2012* to accompany a development application which seeks consent to demolish the rear of the existing dwellings on the site and construct a new adjoining three (3) storey building to operate as a boarding house at Nos. 98-100 Doncaster Avenue, Kensington ("the site").

### 2. PROPOSED VARIATION

Clause 30(1)(h) of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) prescribes the minimum motorcycle parking rate for boarding houses as follows:

*A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following-*

*(1)(a)... (g)*

*(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.*

The proposed boarding house includes 20 boarding rooms (and one Manager's room) and in accordance with the above generation rate, four (4) motorcycle parking spaces are required. Due to site constraints and the retention of existing dwellings on the site for heritage purposes, it is not possible to provide any motorcycle parking on the site.

### 3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

*(1) The objectives of this clause are as follows:*

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

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

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

*(3) Development consent must not be granted 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.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if-

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

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

Note.

When this Plan was made, it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

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

(a) a development standard for complying development,

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

(c) clause 5.4,

(ca) clause 6.16 (3) (b).

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in Subclause 4.6(6).



#### 4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

*"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

The judgement goes on to state that:

*"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

*"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Compliance with the minimum motorcycle parking development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.





## 5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the following planning grounds are submitted to justify contravening the minimum motorcycle parking requirement:

1. The inability to provide motorcycle parking is a direct consequence of the decision to retain the front portion of the existing buildings on heritage grounds and the resultant inability to incorporate basement car parking.
2. The proposed development provides for sustainable alternative transport options by providing additional bicycle parking spaces over the number required under the ARH SEPP.

Twelve (12) bicycle spaces are provided, over and above the requirement for four (4) spaces under the ARH SEPP.

The provision of more bicycle parking spaces than required supports Randwick Council's objectives of supporting active and healthy lifestyles and promoting cycling as a safe, convenient and clean form of transport. It may also encourage residents to utilise cycling to access major activity nodes such as UNSW, Princes of Wales Hospital, Centennial Park and the beaches. More importantly, it will compensate for the lack of motorcycle parking spaces.

3. The need for motorcycle parking is reduced given that the site is in a highly accessible location with convenient access to surrounding amenities such as restaurants, cafés, bars, supermarkets, shopping centres, parks and schools.

With reference to WalkScore.com, the resultant Walk Score and Transit Score are 84 and 73, respectively. This walk score, in conjunction with the various cycleways in the locality, indicates that a high proportion of trips can be accomplished using active travel modes.

4. The need for motorcycle parking is reduced given that the site has convenient access to a variety of public transport options.

The site is within 400m walking distance from several bus services along Anzac Parade and approximately 215m walking distance of a light rail stop (Kensington). The bus routes include routes 302, 303, 348, 370, 391, 392, 393, 394, 395, 396, 397, 399, L94, M10, X92, X94, X96, X97 and X99 which provide access to the City, Redfern, Leichhardt, Eastgardens, Bondi Junction, Coogee, Maroubra Beach and other surrounding suburbs. The Kensington Light Rail stop provides access to the City, UNSW Anzac Parade and Kingsford. The bus and light rail provide connections to several railway stations, with the primary station being Central Railway Station which provides connections across metropolitan Sydney.

5. The need for motorcycle parking is reduced given that the site is ideally located within the vicinity of various off-road and on-road cycle-ways.

The emergence of bikesharing schemes will assist in providing residents the ability to travel short distances throughout the area without the need to personally own a bicycle.

6. The nature of the development, being affordable housing, in conjunction with the proximity of UNSW suggest that a high proportion of lodgers will be students attending the university. UNSW is located approximately 850 metres south of the site (11 minute walk), thus any students attending the university can easily walk or utilise the aforementioned public transport network and active travel routes to and from UNSW, thereby reducing the parking demand of the development.

7. The subject site is also located within proximity of other alternative modes of transportation, being car and bicycle share services. These alternatives are summarised as follows:



- Car Share services can provide an economic alternative to privately owned vehicles. Currently there are five (5) GoGet Car pods located within optimal walking distance, with the closest on Duke Street, near Anzac Parade. This GoGet pod is located approximately 224 metres northwest (4 minute walk) of the subject site.
  - In addition, the existing carparking space on the site will be designated as a car share space, owned by the development. Without having to walk to the nearest pods, there will already be a car share vehicle for residents to use.
8. It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.
  9. The proposed development meets the (assumed) objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below).
  10. The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:
    - a. The proposed boarding house will deliver affordable housing (1.3d);
    - b. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses(1.3c); and
    - c. The proposed developed promotes good design and amenity of the built environment through a well considered design which is responsive to its setting and context (1.3g).

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, there are sufficient environmental planning grounds to justify contravening the development standard.





## 6. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3) (CLAUSE 4.6 (4)(A))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

## 7. 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 (CLAUSE 4.6(4)(A)(II))

### 7a. Objectives of the Development Standard

There are no stated objectives to Clause 30(1)(h) of ARH SEPP. The entirety of Division 3 of the ARP SEPP (which includes Clause 30) does not contain any specific objectives for boarding house developments. In lieu of specific objectives, the overall objectives for development under the SEPP have been considered. These are:

*"The aims of this Policy are as follows:*

- (a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation."*



The underlying policy objective of the ARH SEPP is to incentivise affordable rental housing developments within accessible locations. The Policy has the effect of encouraging affordable developments within a variety of building types and development sizes, dispersed throughout a Local Government Area.

In this regard, the subject site satisfies the accessibility criteria of the SEPP and the proposed development is for a form of affordable accommodation that will integrate into the character of the existing locality and will go some way to meeting housing demand. The proposal therefore offers public and social benefits.

It is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.

As detailed in Section 6 above, given the circumstances of the case which include excellent access to public transport services (light rail and buses), car sharing facilities and the proximity to the University and hospital and likely characteristics of future occupants (students, nurses, etc) the provision of a lower parking provision is acceptable.

It is thus considered that the proposed development is consistent with the objective of the development standard (albeit the general objectives under the SEPP).

#### **7b. Objectives of the Zone**

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R3 are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*  
The proposed boarding house will deliver affordable housing in a density which is compliant with the maximum floor space ratio for the site.
- *To provide a variety of housing types within a medium density residential environment.*  
The proposed boarding house will contribute towards the variety of available housing types in the locality.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*  
This objective is not relevant to the proposal.
- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*  
The proposed development retains the existing dwellings to the street frontage which will contribute to the existing and desired future character within the Racecourse Precinct Heritage Conservation Area. The non-provision of motorcycle parking has no impact on the character of the development or the streetscape.
- *To protect the amenity of residents.*  
The variation to the motorcycle parking provision in the ARH SEPP will not significantly impact on the amenity of residents given that residents have easy access to services and facilities in the area, multiple public transport options, access to a dedicated car share scheme on the site, additional bicycle parking spaces over those required by ARH SEPP and other transport options in the area including GoGet car scheme pods and a variety of cycleways.
- *To encourage housing affordability.*  
The proposed boarding house will deliver affordable housing. The proposed variation will ensure the proposal can be delivered.
- *To enable small-scale business uses in existing commercial buildings.*  
This objective is not relevant to the proposal.



- *To provide a mixture of compatible land uses.*

The proposed boarding housing will contribute to the mix of residential uses in the locality.

The proposed development is consistent with the objectives of Zone R3 in that it will allow for the development of a boarding house in a highly accessible area.

The parking variation is not antipathetic to the objectives for the zone and for that reason the proposed variation is deemed to be acceptable.

#### **8. THE CONCURRENCE OF THE PLANNING SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(B))**

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Planning Secretary has been obtained (cl 4.6(4)(b)). Under cl 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.

#### **9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(A))**

Contravention of the minimum motorcycle parking development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

#### **10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(B))**

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the minimum bicycle parking requirement. As such there is no public benefit in maintaining strict compliance with the development standard. The proposed development is consistent with the objectives of the development standard (albeit the general objectives under the SEPP) 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 zone that make the proposed development in the public interest.

#### **11. CONCLUSION**

Having regard to all of the above, it is our opinion that compliance with the minimum motorcycle parking requirement is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of the standard (albeit the general objectives under the SEPP) and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



### Appendix 3: DCP Compliance Table

#### 3.1 Section C4: Boarding Houses

DCP Clause	Controls	Proposal	Compliance
1	<b>Building Design</b> <b>Boarding rooms</b> <i>Orientate to receive the maximum amount of sunlight.</i>  <i>Provide a balcony, terrace or window opening to outdoor areas for natural light and ventilation; and</i>  <i>Where provided, private open space in the form of a balcony or terrace must have a minimum useable area of 4 square metres.</i>	<p>The southern boarding rooms will probably only receive less than 1 hour of solar access.</p> <p>This is a consequence of the site's orientation on an east west axis. The recommendation to change the use of room G.01 into bike and bin area reduces non-compliances.</p> <p>The use of 6-8m high Lilli Pilis along the northern boundary unnecessarily overshadows the north facing boarding rooms.</p>	No. see comment at left.
	<b>Outdoor Communal Open Space</b> <i>Provide for all boarding houses, with a minimum total area of 20 square metres and a minimum dimension of 3 metres.</i>  <i>Provide at ground or podium level in the form of a courtyard or terrace area, accessible to all residents; Locate and orientate to maximise solar access.</i>   <i>Incorporate both hard and soft landscaped areas;</i>	<p>The communal open spaces are located within multiple areas of the site:</p> <ul style="list-style-type: none"> <li>• Within the front setback</li> <li>• Between the old and new and</li> <li>• Rear setback located to maximise solar access</li> </ul> <p>All the areas are not ideal for the following reasons:</p> <ul style="list-style-type: none"> <li>• The front setback lends itself to noise nuisance of neighbours and pedestrians</li> <li>• The middle area is short of the 20sqm required and</li> <li>• The rear will result in nuisance to the rear accessible rooms and isn't directly connected to the indoor communal rooms.</li> </ul> <p>Landscaping is sparse and where provided, not</p>	<p>YES</p> <p>Yes</p> <p>Recommend that open space be directly connected to the living rooms.</p> <p>Yes noting that increased rear setback would</p>

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DCP Clause	Controls	Proposal	Compliance
	<p><i>Provide shared facilities such as fixed outdoor seating benches, barbecues and the like to allow social interaction; and</i></p> <p><i>Provide partial cover for weather protection, such as pergola, canopy or the like, where it does not cause unreasonable overshadowing on adjoining properties.</i></p>	<p>appropriately located to provide for adequate softening of the development to front, side and rear boundary interfaces.</p> <p>Complies</p> <p>A rear common terrace is weather protected however its small in area noting that an increased rear setback could allow for this area to be increased in width</p>	<p>improve landscaping in the rear yard.</p> <p>YES</p> <p>Yes see comment at left.</p>
	<p><b>Indoor Communal Facilities</b></p> <p><i>Provide with a minimum dimension of 3 metres and a minimum total area of 20 square metres or 1.2 square metres/resident, whichever is greater (48m<sup>2</sup>); and</i></p> <p><i>Orientate to maximise solar access and have a northerly aspect where possible.</i></p>	<p>Rear setback area is compliant.</p>	<p>Yes</p>
	<p><b>Communal Kitchen Bathroom and Laundry Facilities</b></p> <p><i>For all boarding houses, provide communal kitchen, bathroom and laundry facilities where they are easily accessible for all residents, unless these facilities are provided within each boarding room;</i></p> <p><i>For development of over 12 boarding rooms without en suite bathrooms, provide separate bathroom facilities for male and female residents.</i></p> <p><i>Locate and design any communal laundry room to minimise noise impact on boarding rooms and neighbouring properties; and</i></p> <p><i>Where possible, locate clothes lines to maximise solar access while not compromising</i></p>	<p>Facilities are provided within each room</p> <p>Bathrooms are provided in each room</p> <p>The management plan whilst stating submission has not been located within the suite of material submitted with the application. Councils' health officer recommends specific condition requiring a PoM.</p> <p>Drying areas not shown however can be located</p>	<p>YES</p> <p>No, individual bathrooms for each room.</p> <p>No</p> <p>Conditional</p>

DCP Clause	Controls	Proposal	Compliance
	<i>the street amenity or usability of communal open space.</i>	in the rear yard.	
	<p><b>Safety and Crime Prevention</b>  <i>Locate building entry points and internal entries to living areas where they are clearly visible from common spaces.</i></p> <p><i>Locate a habitable living area (such as lounge room, kitchen, dining or bedroom) to allow general observation of the street and communal open space.</i></p> <p><i>Separate ground level private open space from public and common areas by measures such as open fencing or low-level plants; and Select trees and low-lying shrubs that do not interfere with sight lines nor provide opportunities for concealment or entrapment.</i></p>	The design of the boarding house incorporates SOME measures in accordance with CPTED principles such as natural surveillance, access control and space management	Yes
	<p><b>Visual and Acoustic Amenity and Privacy</b>  <i>Indicative locations of facilities and appliances for bathrooms, kitchens and laundries must be clearly shown on the DA plans/drawings. Locate kitchen, dining room, lounge room and outdoor open space adjacent to or directly accessible from each other. Locate similar uses (such as bedrooms or bathrooms) back-to-back, to minimise internal noise transmission.</i></p> <p><i>Provide screen fencing, plantings, and acoustic barriers where practicable to screen noise and reduce visual impacts.</i></p> <p><i>Where possible locate the main entry point at the front of the site, away from the side boundary and adjoining properties.</i></p> <p><i>Locate communal open space, balconies and windows to bedrooms or communal areas, to minimise overlooking, privacy and acoustic impacts on adjoining properties.</i></p> <p><i>An acoustic report prepared by a suitably qualified acoustic consultant must be submitted for new development or conversions /intensifications with an increase in resident numbers. The report must: establish the existing background noise levels; identify all potential noise sources from the operation of the premises, including any mechanical plant and equipment; estimate the level of potential noise emission; establish desirable acoustics performance criteria; and recommend any mitigation measures (such as sound proofing construction and/or management practices) required to achieve relevant noise criteria.</i></p>	<p>The acoustic and visual privacy of adjoining residential properties is being adequately managed.</p> <p>The screening to the northern side of the site is excessive in terms of its shadowing impact on north facing windows.</p> <p>Front entry</p> <p>Most communal open space is acceptable except for that within the front setback.</p> <p>An Acoustic report accompanies the application and reviewed by Councils environmental health officer.</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>Partial compliance.</p> <p>Yes</p>



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DCP Clause	Controls	Proposal	Compliance
	<p><b>Management Plan</b>  <i>Submit a Management Plan with all DAs for new and existing boarding houses, that addresses the general requirements outlined in the Management Plan section in Part B, and the following specific requirements:</i></p> <p><i>Criteria and process for choosing residents. Preference should be given to people on low and moderate incomes.</i></p> <p><i>A schedule detailing minimum furnishings for boarding rooms, provision of facilities and appliances for kitchens, bathrooms and laundry rooms and maximum occupancy of each room.</i></p> <p><i>House rules, covering issues such as lodger behaviour, visitor and party policies, activities and noise control, use and operation hours of common areas (e.g., communal open space and living rooms) and policies for regulating smoking and consumption of alcohol and illicit drugs.</i></p> <p><i>Professional cleaning and vermin control arrangements for at minimum, the shared facilities, such as kitchens and bathrooms. Public notice and signs, including:</i></p> <p><i>A sign showing the name and contact number of the manager/caretaker, placed near the front entry and in a visible position to the public. Clear display of fixed room identification number for each boarding room; and Internal signage prominently displayed in each boarding room and/or communal living areas informing maximum number of lodgers per room, house rules, emergency contact numbers for essential services, annual fire safety statement and current fire safety schedule and emergency egress routes and evacuation plan.</i></p> <p><i>The manager/caretaker must maintain an up-to-date accommodation register with information on residents' details, length of stay, etc. and provide to Council officers upon request.</i></p>	The applicant has not provided a plan of management.	No, an RFI was not issued given the impediment created by the shortfall in motorcycle and car parking.

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**Responsible officer:** Louis Coorey, Senior Environmental Planning Officer

**File Reference:** DA/180/2020

## Development Application Report No. D52/22

**Subject:** 77 Cowper Street, Randwick (DA/507/2021)

### Executive Summary

<b>Proposal:</b>	Amending DA to DA/771/2007 seeking to add a second floor as an attic level, internal reconfiguration and changes to windows of the existing dwelling, and increased size of studio above the rear detached garage and associated works (variation to height of buildings of the RLEP 2012).
<b>Ward:</b>	North Ward
<b>Applicant:</b>	CSA Architects Pty Ltd
<b>Owner:</b>	Phillip Edwards
<b>Cost of works:</b>	\$200,000
<b>Reason for referral:</b>	Non-compliance with the Building Height development standard by more than 10%

### Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 507/2021 for an Amending DA to DA/771/2007 seeking to add a second floor as an attic level, internal reconfiguration and changes to windows of the existing dwelling, and increased size of studio above the rear detached garage and associated works at No. 77 Cowper Street, Randwick, for the following reasons:

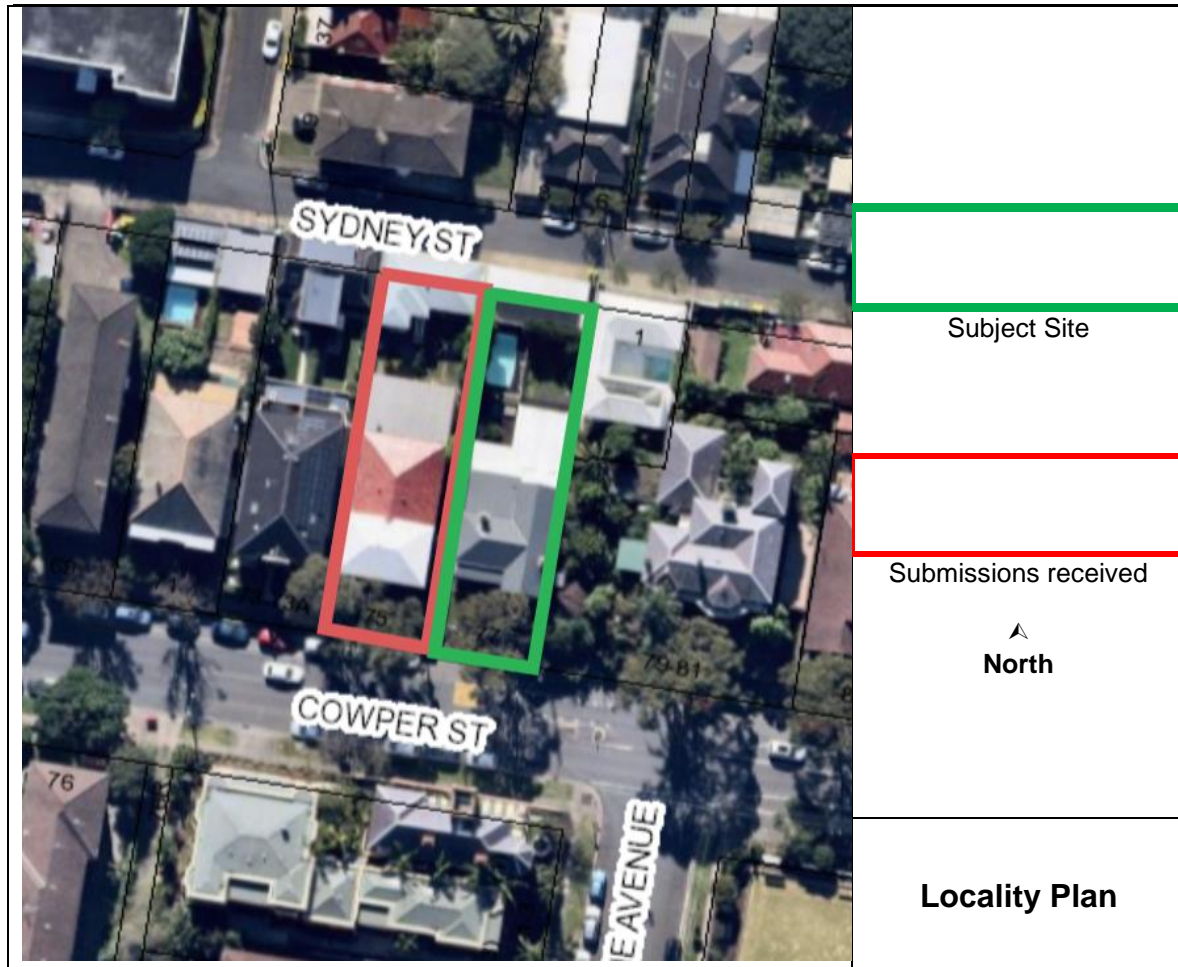
1. The proposal exceeds the maximum building height development standard in Clause 4.3 - Building Height of Randwick Local Environmental Plan 2012 and does not satisfy the requirements under Clause 4.6 of the Randwick Local Environmental Plan 2012.
2. The proposed development fails to comply with the objectives of the R3 Medium Residential zone established within Randwick Local Environmental Plan 2012 as the proposed second floor addition is not suitably integrated into the existing roof form and its visual prominence is contrary to the desirable elements of the existing streetscape and built form.
3. The proposed development fails to satisfy the Aim in Clause 1.2(2)(d) of Randwick Local Environmental Plan 2012 as the size and scale of the proposed second floor addition will have an adverse visual impact within the streetscape.
4. The proposed development fails to comply with the objectives and controls in Section 3 Building Envelope and Section 4 Building Design of Randwick Development Control Plan 2013.
5. The proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street.
6. The approval of the development would create an undesirable precedent, and the development proposes significant deviations from both the numerical and merit-based controls and is therefore not in the public interest.

### Attachment/s:

Nil

D52/22

D52/22



## 1. Executive summary

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

The proposal seeks development consent for an Amending DA to DA/771/2007 seeking to add a second floor as an attic level, internal reconfiguration and changes to the windows of the existing dwelling, and increased size of studio above the rear detached garage and associated works.

The proposal was notified and advertised in accordance with the Randwick Community Participation Plan 2019 and one (1) submission in objection was received.

The key issues raised relate to building height and design of the proposed second floor addition.

The proposed second floor addition exceeds the maximum 9.5m Building Height development standard under Randwick Local Environmental Plan (RLEP) 2012 by 2.19m or 23%. The variation is not supported as the second floor addition is not suitably integrated into the existing roof form to minimise its visual prominence within the streetscape and is therefore inconsistent with the objectives of the maximum building height development standard. The applicant's written request seeking an exception to the development standard has not adequately addressed those matters that are required to be demonstrated pursuant to Clause 4.6 of RLEP 2012.

Council officers provided the Applicant with two opportunities to amend the design to address the concerns raised in relation to the proposed second floor addition. Whilst the amended proposal resulted in an improvement to the design, it does not suitably integrate the proposed second floor addition into the existing roof to minimise its visual impact to an acceptable level. This outcome is

likely to result in a smaller room compared to that currently proposed. However, there is an opportunity for the applicant to consider alternative design options without compromising the amenity of the intended space, such as setting the addition behind the main ridge, or extending the rear of the dwelling at the first floor level. On that basis, the proposed second floor addition is not supported in its current form.

The application is therefore recommended for refusal.

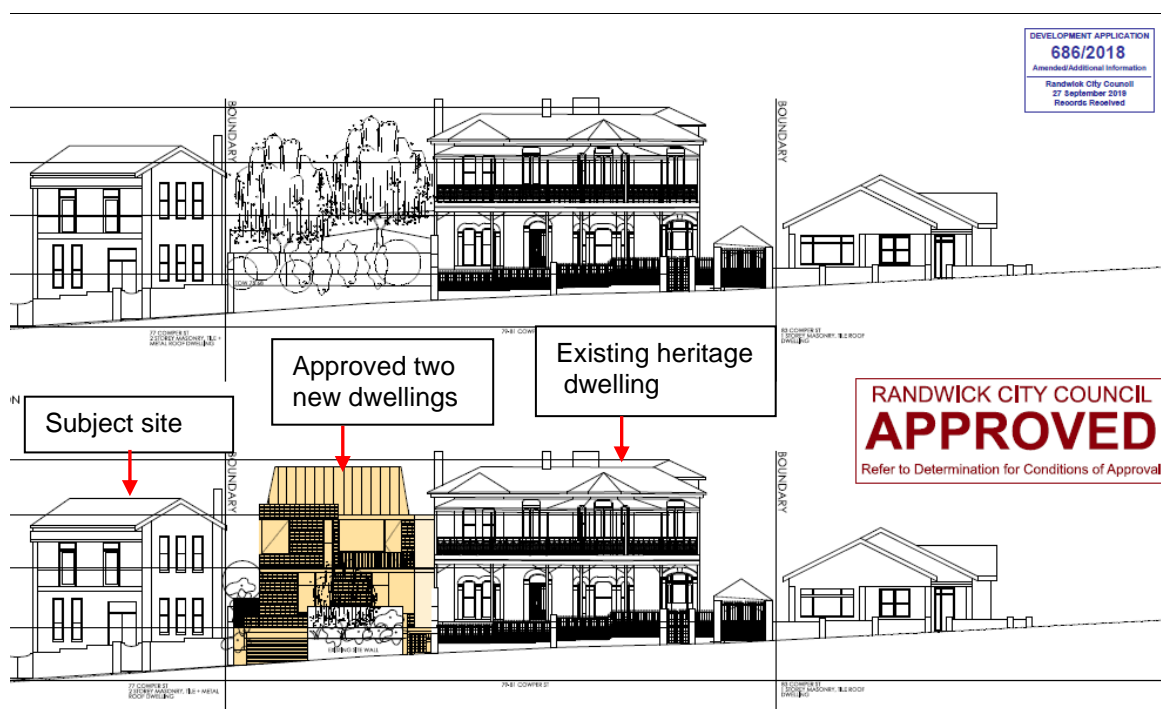
## 2. Site Description and Locality

The subject site is known as 77 Cowper Street and is legally described as Lot 100 in DP 786713.

The site is regular in shape and has a 13.75m frontage to Cowper Street, a 45.7m side boundary depth, a 13.9m frontage to Sydney Street at the rear and a total site area of 631.6m<sup>2</sup>. The site slopes to the rear and to the north-west corner with a fall of approximately 3m.

The site contains a two-storey detached dwelling house and an inground swimming pool and garage at the rear.

The adjoining property to the east at 79-81 Cowper Street contains a dwelling house which is listed as a local Heritage Item (I335, being “Peckham”, Victorian mansion), pursuant to Schedule 5 of RLEP 2012. On 12 March 2020, Council granted development consent for the construction of multi-dwelling development, comprising two new 3 storey dwellings above a basement adjacent to the existing heritage dwelling (DA/686/2018). An extract of the approved street elevation is shown in **Figure 1**. The approved development has not been constructed.



**Figure 1** – Approved multi-dwelling development at 79-81 Cowper Street (DA686/2018) (existing above and approved below)

At the rear of 79-81 Cowper Street there is a single storey dwelling house at 1 Sydney Street, which also adjoins the eastern boundary at the rear of the site. The adjoining property to the west at 75 Cowper Street contains a two storey detached dwelling house. The dwelling on the opposite side of Cowper Street at 1 The Avenue contains a local Heritage Item (I452, being “Tayar”, Italianate house) pursuant to Schedule 5 of RLEP 2012. The properties to the north across Sydney Street are a mix of single storey semi-detached dwellings and 3-4 storey residential flat buildings.

Refer to **Figures 2 to 7** showing the existing site and context.



D52/22



Figure 2 - Existing Site



Figure 3 - Existing garage at the rear of the site



Figure 4 - existing dwelling at 1 The Avenue



Figure 5 - Adjoining property at 79-81 Cowper Street



Figure 6 - Existing dwelling at 1 Sydney Street



Figure 7 - Existing development to the west of the site

### 3. Relevant history

#### DA/771/2007

On 14 January 2008, Council granted development consent for alterations and additions to the existing dwelling including an extension at the rear, a first floor addition over the garage with a balcony, alterations to the front fence and landscape works including a deck and walkway to garage.

A Construction Certificate was issued by a Private Certifier on 2 November 2009 (CC154/2009). It is understood the studio above the garage was not constructed.

#### DA/507/2021 (current DA)

A chronology of events in relation to the concerns raised by Council and requested amendments is outlined below:

Date	Council Information request/ Applicant response
3 February 2022	Council raised concerns regarding the building height and the proposed second floor addition and recommended it is integrated into the roof form. It was also noted that the addition of kitchen and bathroom facilities within the studio space above the garage constitutes a self-contained dwelling and they should be deleted from the proposal as no approval was sought for the use of the studio as a separate domicile.
9 March 2022	The Applicant submitted amended plans to Council for review showing the proposed second floor addition with a lower roof and change of pitch to 30 degrees. The studio above the garage was nominated as a secondary dwelling.
20 May 2022	Council advised the Applicant that the amended design of the proposed second floor addition remains too visually prominent and therefore not supported in its amended form. A hipped roof form or some other design change to integrate it better into the existing roof form and reduce its visual impact was recommended.
30 May 2022	The Applicant submitted amended plans with further changes to the proposed second floor addition. The amendments are outlined in <b>Section 4</b> below.

#### 4. Proposal

The proposal seeks development consent for an Amending DA to DA/771/2007 seeking to add a second floor as an attic level, internal reconfiguration and changes to the windows of the existing dwelling, and increased size of studio above the rear detached garage and associated works.

Specifically, the works involve:

##### *Main Dwelling*

- addition of a 2.4m high highlight window to ground floor secondary living room western elevation wall
- minor demolition and reconfiguration of the ground floor kitchen, pantry, and laundry
- new stair to first floor
- second floor addition containing a bedroom and ensuite, robe and storage.

##### *Approved Studio above the garage*

- relocation of the first floor northern elevation wall 900mm to the north (closer to Sydney Street), increasing the internal floor area from 50m<sup>2</sup> to 59m<sup>2</sup>
- inclusion of a kitchen, separate bathroom, with shower, basin, and WC,
- new storage cupboards
- changed flat roof to skillion roof and new skylight
- installation of a 1m high timber balustrade over the concrete hob.

##### Amended Proposal

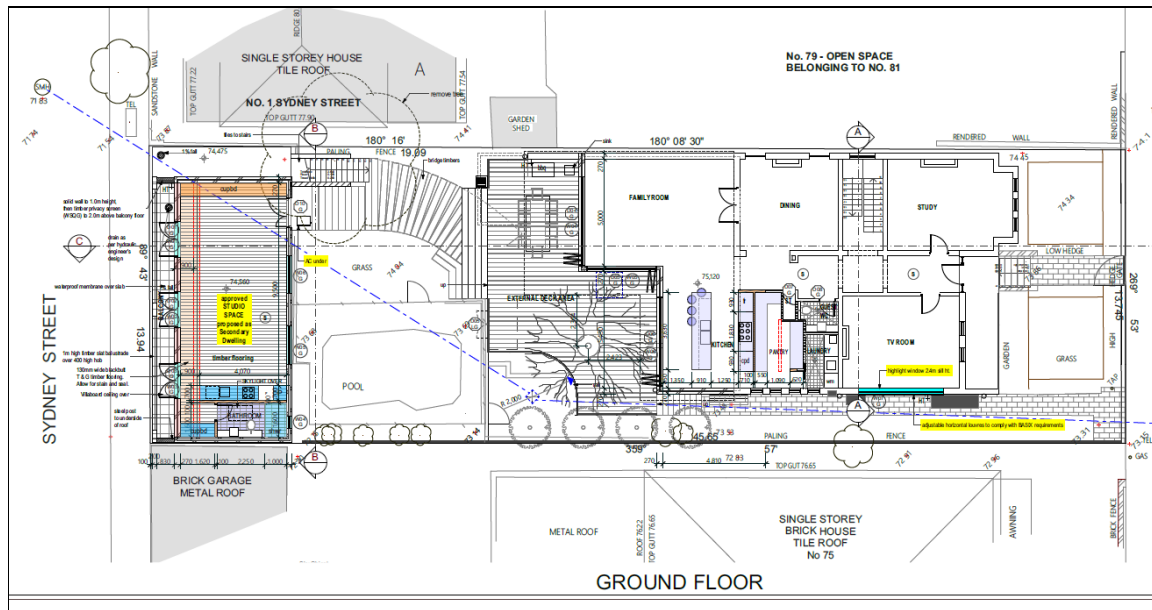
On 30 May 2022, the Applicant submitted amended plans, including the following changes to the proposed second floor addition:

- enlarged internal layout to accommodate circulation space and a robe adjacent to the ensuite;
- deletion of the front gable and modification to the hipped roof form;
- removal of the window at the street elevation; and
- change to the colour of the wall cladding from a light to a dark finish.

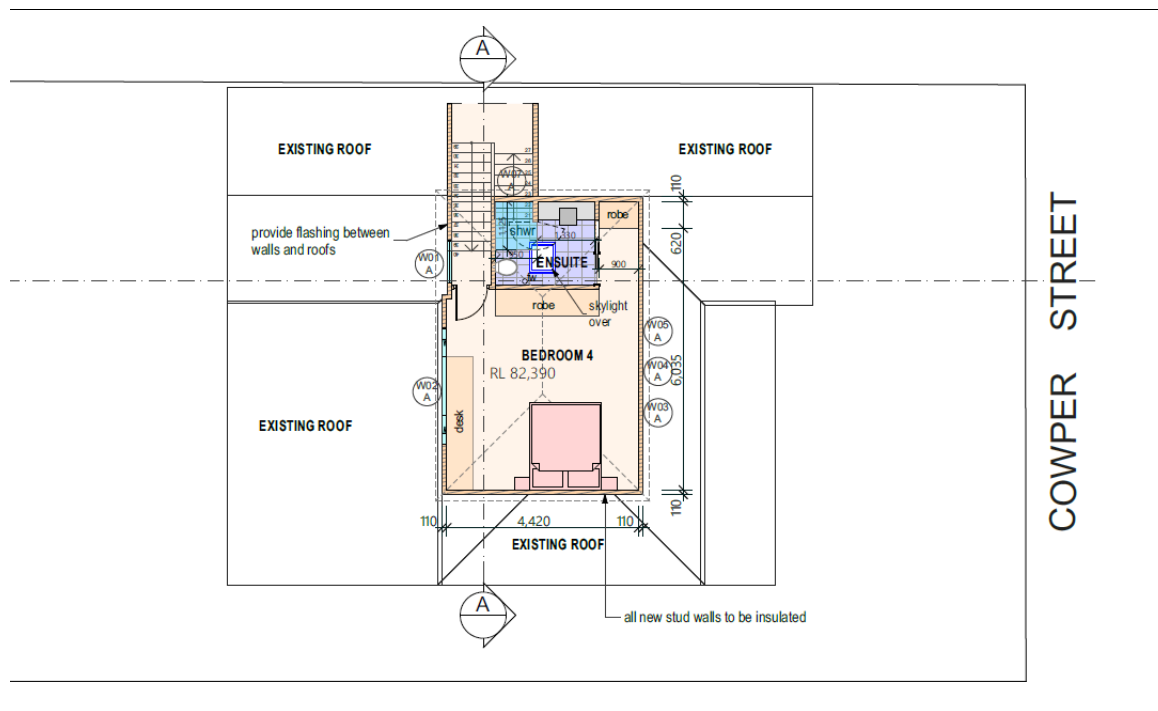
The amendments to the proposed second floor addition resulted in the height of the roof being reduced by 700mm, from 12.39m to 11.69m. The proposed kitchen and bathroom facilities within the studio above the garage are retained and approval is sought to use it as a secondary dwelling.



Extracts of the amended plans are provided in **Figures 8 to 11**.



**Figure 8** – Proposed ground floor plan



**Figure 9** – Proposed second floor addition above the main dwelling

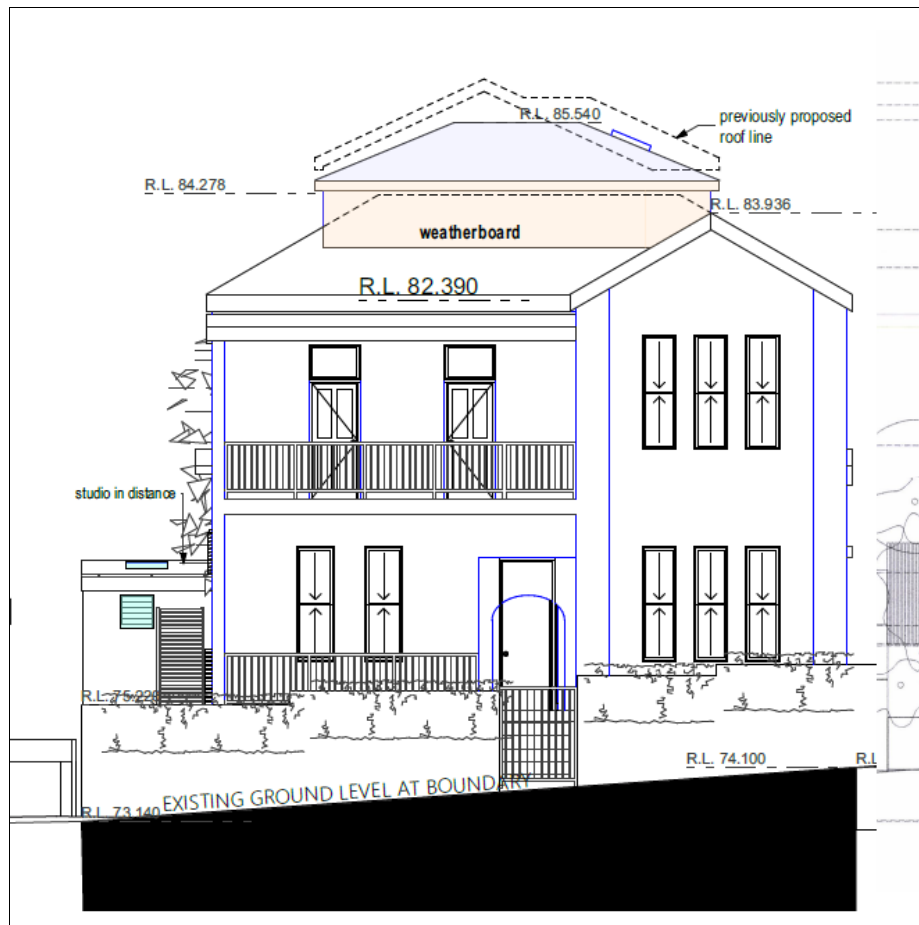


Figure 10 – Proposed second floor addition (street elevation)

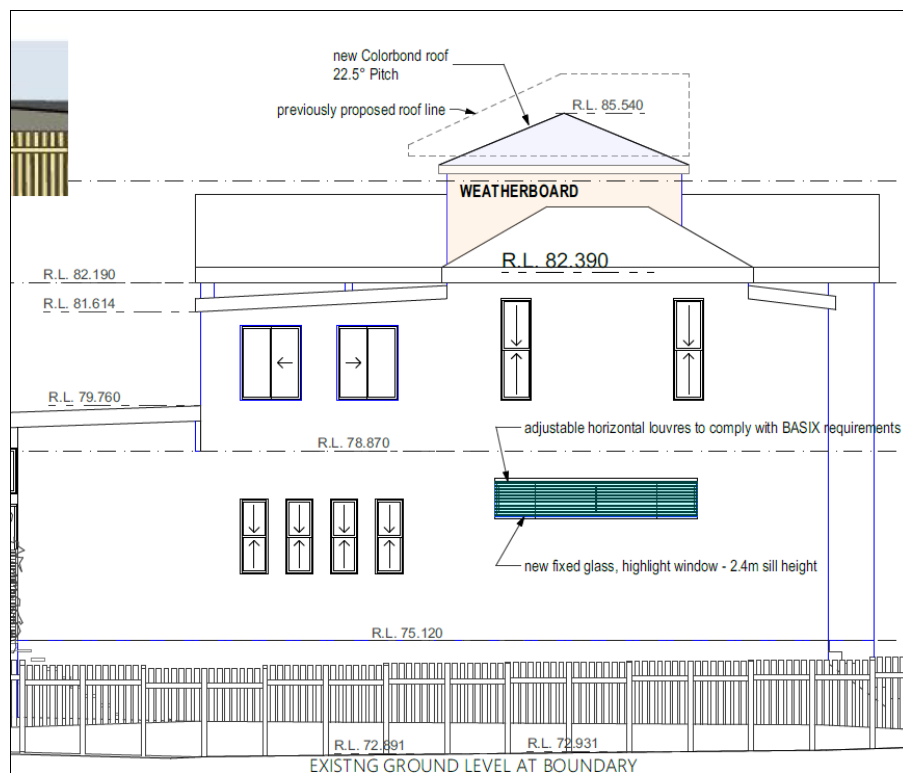


Figure 11 – Proposed second floor addition (western elevation)

## 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 2019. The following submissions were received as a result of the notification process:

- 75 Cowper Street

Issue	Comment
Overshadowing in the morning to the backyard and large part of the house from existing overgrown trees and hedges planted along the common boundary.	Councils solar access controls do not contemplate overshadowing caused by trees or hedges, and therefore it is not relevant to the assessment of this application. The blocking off sunlight caused by trees is dealt with under the <i>Trees (Dispute between Neighbours) Act 2006</i> .
Overshadowing from the proposed addition above the garage.	The size of the proposed garage addition will increase slightly by 9m <sup>2</sup> primarily by extending the northern wall 1m closer to Sydney Street. The overall height of the secondary dwelling will not change compared to the studio approved under DA771/2007. Based on the shadow diagrams submitted with the application, the additional shadow cast to the rear of 75 Cowper Street at midday will be negligible.
Structural impacts to the garage	The recommended development consent includes standard conditions to protect the adjoining properties can be imposed on any consent granted
No objection would be raised subject to: <ul style="list-style-type: none"> <li>• removal of the trees close to the house and garage less than 1.5m</li> <li>• level of other trees lowered and maintained to 2.5m in height</li> <li>• hedge lowered in height by 2-30cm</li> <li>• pruning of hedge to prevent damage to the fence</li> </ul>	As stated previously, the removal or pruning of existing trees and vegetation is not a matter for consideration under this development application.

### 5.1. Renotification

The amended proposal was publicly re-notified in accordance with the Randwick Community Participation Plan 2019. No submissions were received.

## 6. Relevant Environment Planning Instruments

### 6.1. State Environmental Planning Policy SEPP (Housing) 2021

#### *Chapter 3 Diverse Housing*

The application for a secondary dwelling would generally be prohibited development as specified by the Land Use Table for the R3 Medium Density Residential zone, in accordance with the RLEP 2012.

Notwithstanding, the proposal may rely on the provisions of the Housing SEPP 2021 for the construction of a secondary dwelling on the Site.

#### *Secondary Dwelling*

The application has been submitted seeking consent under Chapter 3 Diverse Housing Part 1 Secondary Dwellings the Housing SEPP. Under Division 1, the following clauses are applicable:

#### Clause 49 – Definition

The proposed development falls within the scope of the definition of a secondary dwelling in that it entails alterations or additions to an outbuilding (garage) for the purposes of a secondary dwelling in a R3 zone.

#### Clause 50 – Application of Part

This development is for the purposes of a secondary dwelling on land in a residential zone where a dwelling house is permissible on the land under RLEP 2012 with Council's consent.

#### Clause 51 – No Subdivision

The proposed development for a secondary dwelling does not involve subdivision.

Under Division 2, the following clauses are applicable:

#### Clause 52 – Development may be carried out with consent

Under subclause (2) a consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling. The proposal constitutes a principal dwelling and secondary dwelling and complies with this requirement.

Under subclause 2(c), the following criteria applies:

- i) *The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area for a dwelling house on the land under another environmental planning instrument.*
- ii) *The total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The subject site is 631.6m<sup>2</sup>, as per the RLEP 2012 the maximum FSR for the subject site is 0.9:1. The proposed floor space ratio for the subject site is 0.6:1, which meets the numerical control as per the RLEP 2012. The proposed secondary dwelling will have an area of 59m<sup>2</sup>, which complies with the maximum total floor area.

#### Clause 53 - Non-discretionary development standards—the Act, s 4.15

The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies-

- (a) *for a detached secondary dwelling-a minimum site area of 450m<sup>2</sup>,*
- (b) *the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The site has an area of 631.6m<sup>2</sup>, and therefore complies with the minimum site area.  
Three car spaces will be retained within the existing garage below the secondary dwelling.

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

The site is zoned R3 Medium Density Residential under RLEP 2012, and the proposal is permissible with consent. The proposal is inconsistent with the relevant objectives of the R3 zone in that the

proposed second floor addition is not suitably integrated into the existing roof form and its visual prominence is at odds with the desirable elements of the existing streetscape and built form.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.9:1	0.6:1	Yes
CI 4.3 (2A): Building height (max)	9.5m	11.69m	No  Refer to <b>Section 7</b> of this report.

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

The non-compliance with the Building Height development standard is discussed in **Section 7** below.

#### 6.2.2. Clause 5.10 - Heritage conservation

The site contains a Victorian villa. The site is not listed as a Heritage Item and is not in a Heritage Conservation Area (HCA) under RLEP 2012. The adjoining property to the east at 79-81 Cowper Street is "Peckham", a Victorian mansion listed as a Heritage Item under RLEP 2012 (I335). To the south of the site on the corner of Cowper Street, at 1-3 The Avenue, is "Tayar" an Italianate house also listed as a Heritage Item (I1452). To the north of the site, on the opposite side of Sydney Street is the Gordon Square Heritage Conservation Area (HCA).

Council's Heritage officer recommends the proposal comply with the building height controls in order to minimise the impact on the streetscape setting and the views to and from the heritage items to the east and south, and the single storey cottages within the HCA to the north.

### 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	9.5m	11.69m	2.19 m	23%

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 Building Height development standard (Clause 4.3)

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

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

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

The objectives of the Building Height standard are set out in Clause 4.3 (1) of RLEP 2012.

The applicant has addressed each of the objectives as follows:

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

*The proposed development supports the economic and orderly development of land, as intended by the RLEP2012 and RDCP2013 controls. The proposed alterations and additions are permitted in the R3 Medium Density Residential zoning of the site, and is consistent with the intent for development on the subject site. It is considered that the proposed alterations and additions to the built form represents a suitable development within a medium-density residential context.*

*Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 0.59:1, being compliant with the numerical development standard, and well below the bulk and scale expressed as a maximum FSR contemplated for the site.*

*This demonstrates that a potentially larger built form could be accommodated in comparison to that proposed.*

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

*The site is not heritage listed and not in a heritage listed area. However, the site adjoins to the eastern boundary an item of heritage at No. 79-81 Cowper Street (1335, being “Peckham”, Victorian mansion), in addition to a being opposite an item of heritage at Nos. 1-3 The Avenue (1452, being “Tayar”, Italianate house), of local significant pursuant to RLEP2012.*

*It is acknowledged that a 30.5% (2.90m) variation from the RLEP2012 numerical height standard of 9.5m is generated by the proposed roof attic addition. However, it is considered that the proposed alterations and additions are compatible with the local heritage context surrounding the site, including the adjoining approved multi-unit housing development at Nos. 79 – 81 Cowper Street (Figure 6) and the two – three-storey dwelling house opposite at No. 1 The Avenue (Figure 7).*

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

*An adverse impact on the amenity of the streetscape or adjoining or neighbouring land is avoided with the proposal not resulting in any additional visual or acoustic privacy impacts, visual impact from the height, bulk and scale, significant additional overshadowing, or loss of views than the existing dwelling house development.*

*No impact to privacy is expected from overlooking as a result of the noncompliant roof height, with the roof attic sufficiently recessed from the floors below, and with a minimum 2.4m side setback, and east elevation side facing windows being to a non-habitable room (ensuite) to mitigate overlooking adjoining properties primary living or private open space areas.*

*The orientation of primary openings to the front and rear of the dwelling ensures that visual and acoustic privacy is maintained to the eastern and western adjoining neighbours. As illustrated on the accompanying shadow diagrams the proposal maintains at least three (3) hours of direct sunlight between 8am and 4pm on 21 June to adjoining dwellings and to north-facing living areas and private open space of the proposed dwellings.*

*View sharing for adjoining properties and the public domain is not unreasonably impacted by the proposed development given the topography of the site, with side setbacks providing adequate separation distance between the proposed development and neighbouring dwellings to the east and west, and the dwelling to the south (rear) being at a higher elevation than the subject site.*

#### Assessing officer's comment:

The Applicant's written request contends the proposed development is consistent with the desired future character of the area on the basis it supports the economic and orderly development of the land, complies with the planning controls, is permissible in the R3 zone and suitable for a medium density context and is below the FSR development standard and therefore it could accommodate a larger development on the site.

To establish whether the size and scale of the proposed development is compatible with the desired future character of the area, the essential elements that make up the character of the surrounding urban environment should be considered. The most important contributor to urban character is the relationship of built form to surrounding space created by building height, setbacks and landscaping. The approved and constructed development in the immediate vicinity of the site is considered as part of the local character and accordingly the desired future character of the area.

The adjoining site to the east at 79-81 Cowper Street is occupied by a part two, part three storey heritage listed Victorian mansion (it reads as two storey from Cowper Street). In 2020, Council granted development consent on the vacant part of the amalgamated lot for a two storey contemporary terrace infill development, incorporating an additional floor within a mansard roof

form, which mostly respects the surrounding masonry two storey residential forms along Cowper Street. It is noted that the development was approved under a different set of planning controls applicable to multi-unit dwellings in Part C2 of RDCP 2013 to which it complied.

The residential properties to the west, including the detached dwelling house at 75 Cowper Street, two attached dwellings in a side-by-side configuration at 73 Cowper Street, and two attached dwellings in a vertically stacked arrangement at 71 Cowper Street, exhibit a predominant and consistent two storey built form character within the streetscape.

Council's planning controls for single dwellings under Part C1 of RDCP 2013 stipulate a maximum of two storeys, and any structures above the external wall height limit are for roof elements only. In this circumstance, the amended design of the second floor addition is not suitably integrated into the existing roof form as it incorporates vertical walls along the elevations. The visual prominence of the amended proposal is not compatible with the desired streetscape character, and it fails to achieve an appropriate urban design outcome. The proposal therefore does not satisfy objective (a) of the Building Height development standard.

Council's Heritage officer recommends the proposal comply with the building height controls to minimise the impact on the streetscape setting and the views to and from the heritage items to the east and south, and the single storey cottages within the heritage conservation area to the north across Sydney Street. The amended proposal is not compatible with the scale and character of nearby heritage items as the proposed second floor addition is not suitably integrated into the existing roof form to minimise its visual prominence within the streetscape. The proposal therefore does not satisfy objective (c) of the Building Height development standard.

The applicant's written request has not adequately demonstrated that compliance with the Building Height development standard is unreasonable or unnecessary in the circumstances of the case.

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

seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the Building height development standard as follows:

*The proposal is for a maximum height of 12.398m, which is a 30.5% (2.90m) variation from the numerical development standard of 95m, pursuant to the RLEP2012 statutory standard.*

*It is considered that the additional height is a minor increase on the existing height, and the proposed FRS is significantly below the maximum for the site. In this regard, a dwelling with a bulk and scale consistent with the maximum FSR for the site would have more of an amenity impact than the proposed height non-compliance.*

*As illustrated in the streetscape elevation (**Figure 5**), the proposed alteration and additions development is contained within a building envelope that is compatible with the recently approved multi-dwelling housing development (**DA/686/2018**) adjoining the site.*

*Shadow diagrams accompanying this application indicate that the overshadowing impact from the 30.5% (2.90m) height variation is not significant, with three hours of sunlight maintained to north facing living areas and POS of the adjoining dwellings to the east and west, between 8am and 4pm during mid-winter.*

*Visual and acoustic privacy impacts to adjoining neighbours from the 2.90m of additional height has also been carefully considered, with adequate separation distance between the proposed roof attic development, and neighbouring dwellings to the east and west, being recessed towards the centre and front (south) of the roof form.*

*No impact to privacy is expected from overlooking as a result of the non-compliant roof height, with the roof attic sufficiently recessed from the floors below, and with a minimum 2.4m side setback.*

*The proposal has been designed to have a variety of features including indentation and recesses and steps in the floor levels, and a range of materials and colours, with the 30.5% (2.90m) height variation providing for roof features and openings within the attic level, creating suitable articulation to the built form and building façade.*

*Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 0.59:1, being compliant with the numerical development standard, and well below the bulk and scale expressed as a maximum FSR contemplated for the site. This demonstrates that a potentially larger built form could be accommodated in comparison to that proposed*

*The topography of the local area, with dwellings to the south and opposite the site being at a higher elevation, plus retained side setbacks, and recessed attic level that provides adequate separation distance between the existing dwelling and neighbouring dwellings mitigates significant view impacts from the proposed 2.9m height variation to surrounding neighbours and the public domain.*

*Provision of a high level of internal amenity, being a significant improvement on existing, as demonstrated by compliance with key amenity criteria within the Randwick Comprehensive Development Control Plan 2013 (RDCP2013) for both the General Principles for Development and for Low Density Residential development types, particularly in regard to key amenity criteria within the DCP.*

#### Assessing officer's comment:

The applicant's written request contends there are sufficient environmental planning grounds to justify contravention of the development standard based on a compliant FSR development having more of an amenity impact than the proposed height non-compliance, a paucity of amenity impacts, appropriate design and articulation, good internal amenity and compatibility with the approved multi-unit dwelling adjoining to the east.

However, the applicant's environmental planning grounds do not focus on the specific aspect of the development that does not comply with the development standard, but rather makes reference to the development as a whole. The lack of significant amenity impacts as a result of non-compliance is not, of itself, a reason that justifies the non-compliance. It is also worth noting the FSR control operates in conjunction with building height, wall height and setback controls to define the 3-dimensional space within which a development may occur, that is, the building envelope.

The applicant's written request fails to recognise that the proposed second floor addition, which contravenes the development standard, is not suitably integrated into the roof form to minimise its visual prominence within the streetscape. On that basis, it is not compatible with the predominant built form context and the desired future character of the locality. The applicant's environmental planning grounds are not supported.

### **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 Building Height standard and R3 zone is provided below:

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

For the reasons outlined in the applicant's written request, the development is inconsistent with the objectives of the Building Height standard.

#### ***Assessment against objectives of the R3 zone***

The objectives of R3 zone are:



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

Assessing officer's comment: The proposed second floor addition fails to recognise the desirable elements of the existing streetscape. The development is therefore inconsistent with the objectives of the Building Height standard and the R3 zone. Therefore, the development will not 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?*

The proposed second floor addition fails to achieve a suitable urban design outcome and there is no public benefit.

#### **Conclusion**

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that development consent is unable to be granted for development that contravenes the Building Height development standard.

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

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

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

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

#### **9. Environmental Assessment**

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposed second floor addition does not satisfy the relevant objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed second floor addition is not 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 proposed second floor addition is not suitably integrated into the existing roof form and is too visually prominent within the streetscape. Therefore, the site is not considered suitable for the proposed development in its current form.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposed second floor addition is not suitably integrated into the existing roof form and is too visually prominent within the streetscape. Accordingly, the proposal is not considered to be in the public interest.

## 9.1. Discussion of key issues

### Building Height

Part C1 of Randwick Development Control Plan (RDCP) 2013 contains building envelope controls including, setbacks and external wall height, which in conjunction with the Building Height and FSR development standards under RLEP 2012, define a 3-dimensional space within which a development may occur.

A maximum 9.5m Building Height development standard applies to the site under RLEP 2012. The amended proposal has a maximum overall height of 11.69m, which exceeds the maximum height by 23% (refer to **Section 7.1** of this report).

A maximum external wall height of 7m applies to the site under RDCP 2013. The proposed second floor addition contains side walls above the existing roofline up to a maximum height of 10.77m (RL 84.27 minus RL 73.5 - western elevation).

Council's planning controls for single dwellings stipulate a maximum of two storey and any structures above the external wall height limit are intended for roof elements only. Whilst the

proposed second floor addition is set in from the floor below, the side walls are clearly visible above the roofline, and it will therefore read as a separate storey within the streetscape. In this circumstance, the proposed second floor addition is not suitably integrated into the existing roof form to minimise its visual prominence, and therefore it is not compatible with the predominant streetscape character, and it fails to achieve a suitable urban design outcome.

Council officers provided the applicant with two opportunities to amend the design to address the concerns raised in relation to the proposed second floor addition. Whilst the amended proposal resulted in an improvement to the design, it does not suitably integrate the proposed second floor addition into the existing roof form to minimise its visual impact to an acceptable level. It is considered a more skillful design could be achieved without compromising the overall amenity and functionality of the intended space by setting the addition behind the main ridge or by extending the rear of the dwelling at the first floor level. On that basis, the proposed second floor addition is not supported in its current form.

## 10. Conclusion

That the application to amend DA to DA/771/2007 seeking internal reconfiguration and changes to windows of the existing dwelling, and increased size of the approved studio above the garage and use as a secondary dwelling and associated works, as amended by conditions, be refused for the following reasons:

### Recommendation

- A. That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 507/2021 for an Amending DA to DA/771/2007 seeking to add a second floor as an attic level, internal reconfiguration and changes to windows of the existing dwelling, and increased size of studio above the rear detached garage and associated works at No. 77 Cowper Street, Randwick, for the following reasons:
  1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal exceeds the maximum building height development standard in Clause 4.3 - Building Height of Randwick Local Environmental Plan 2012. The Applicant's Clause 4.6 written request seeking an exception to the development standard is not well founded and therefore is not supported.
  2. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives of the R3 Medium Residential zone established within Randwick Local Environmental Plan 2012 as the proposed second floor addition is not suitably integrated into the existing roof form and its visual prominence is contrary to the desirable elements of the existing streetscape and built form.
  3. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to satisfy the Aim of the Plan in Clause 1.2(2)(d) of Randwick Local Environmental Plan 2012 as the size and scale of the proposed second floor addition will have an adverse visual impact within the streetscape.
  4. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives and controls in Section 3 Building Envelope and Section 4 Building Design of Randwick Development Control Plan 2013.
  5. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street.

6. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development would create an undesirable precedent, and the development proposes significant deviations from both the numerical and merit-based controls and is therefore not in the public interest.

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## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Heritage Planner

Council's Heritage Planner provided the following comments:

##### *The Site*

*The site is occupied by a fine two storey Victorian villa. Immediately to the east of the site at no.79-81 Cowper Street is "Peckham", a Victorian mansion listed as a heritage item under Randwick LEP 2012. To the south of the site on the corner of Cowper Street, at no.1-3 The Avenue, is "Tayar" an Italianate house also listed as a heritage item. To the north of the site on the opposite side of Sydney Street is the Gordon Square heritage conservation area.*

##### *Proposal*

*The applicant proposes alterations and additions to the existing dwelling, including a "pop-top" upper level addition and an upper level addition to the existing rear outbuilding accessed from Sydney Street.*

##### *Controls*

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

##### *Comments*

*The building is separated from surrounding heritage properties and will not impact on their physical fabric. The proposed works to the dwelling and the outbuilding should be consistent with LEP and DCP controls including those related to building height and Development in Laneways within the Low Density Residential section of Randwick DCP 2013, in order to minimise impact on the streetscape setting and views to and from the heritage items to the east and south and the single storey cottages within the heritage conservation area to the north.*



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

Note the Applicant's Clause 4.6 written request below relates to the originally lodged proposal.

### RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application that seeks alterations and additions including increased floor area and fit out to the approved garage studio, minor internal reconfiguration to the existing dwelling, plus new roof attic floor level, at Lot 100 in DP 786713, commonly known as No. 77 Cowper Street, Randwick 2031.

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

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

#### **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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

#### **Development Standard to be Varied**

The proposal seeks a variation to the development standard contained within Clause 4.3 of the RLEP2012 – maximum height 12m, as demonstrated on the LEP map in Figure 1 below. However, as the proposal is to a dwelling house, pursuant to Clause 4.3 (2A) of the RLEP2012, the site is subject to a maximum building height of 9.5m, with the proposal for a maximum roof

height of 12.398m being a 30.5% (2.90m) variation from the numerical development standard (Figure 2).

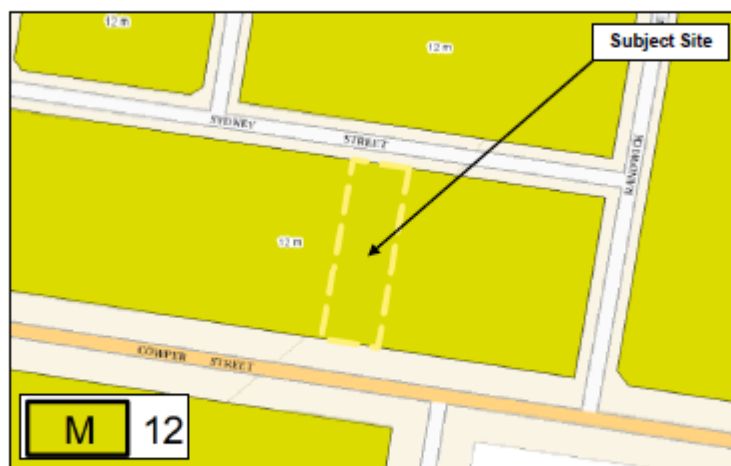


Figure 1: Height of Building Map

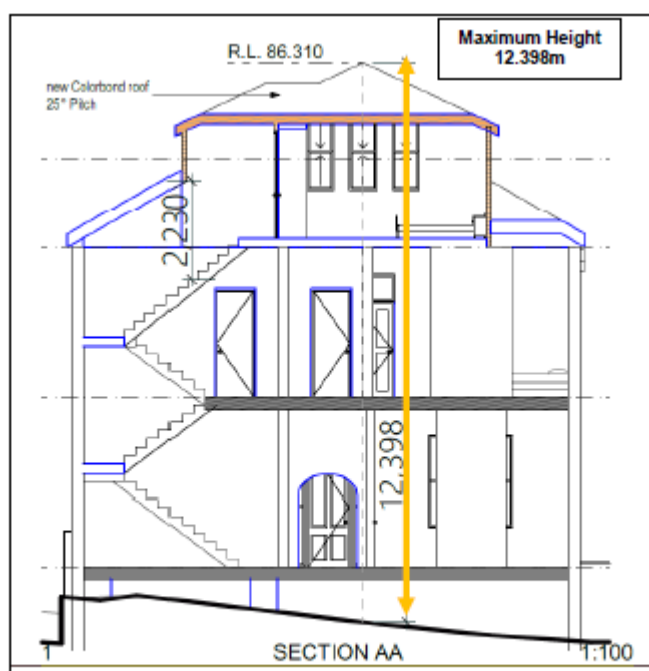


Figure 2: Excerpt Section Plan indicating maximum building height  
Justification for Contravention of the Development Standard

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

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

**Assessment:** It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal is for a maximum height of 12.398m, which is a 30.5% (2.90m) variation from the numerical development standard of 9.5m, pursuant to the RLEP2012 statutory standard.
- It is considered that the additional height is a minor increase on the existing height, and the proposed FRS is significantly below the maximum for the site. In this regard, a dwelling with a bulk and scale consistent with the maximum FSR for the site would have more of an amenity impact than the proposed height non-compliance.
- As illustrated in the streetscape elevation (Figure 5), the proposed alteration and additions development is contained within a building envelope that is compatible with the recently approved built form adjoining the site. It is therefore considered that the proposed height of the development does not represent an overdevelopment of the site, or a development with a height that is not compatible with the context in which it is located. In this regard, it is considered that the proposed height and 30.5% (2.90m) variation would be compatible with the context of the surrounding built environment.
- The proposal complies with the objectives of the development standard and the R3 Medium Density Residential zone, indicated in the assessment at Table 1. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for development within the zone.
- Notwithstanding the numeric departure, the proposed alterations and additions will have a height, bulk, and scale compatible with the scale of the existing built form and that of the surrounding local area, and the height non-compliance will not have an adverse impact to surrounding properties and the streetscape, including items of heritage, in relation to significant additional overshadowing, visual impact from the bulk and scale, visual or acoustic privacy impacts, or view loss. Furthermore, the proposed alteration and additions provide for high-quality internal amenity to the existing dwelling house.

#### Overshadowing

- Some overshadowing of the adjoining lots to the east and west is associated with the existing dwelling house. However, given the north-south orientation of the subject site, the retained side setbacks, in addition to the stepped topography of the site, solar access is maintained to adjoining neighbours. In this regard, shadow diagrams accompanying this application indicate that the overshadowing impact from the 30.5% (2.90m) height variation is not significant, with three hours of sunlight maintained to north facing living areas and POS of the adjoining dwellings to the east and west, between 8am and 4pm during mid-winter.

### Visual and Acoustic Privacy

- Visual and acoustic privacy impacts to adjoining neighbours from the 398mm of additional height has also been carefully considered, with adequate separation distance between the proposed roof attic development, and neighbouring dwellings to the east and west, being recessed towards the centre and front (south) of the roof form.
- No impact to privacy is expected from overlooking as a result of the non-compliant roof height, with the roof attic sufficiently recessed from the floors below, and with a minimum 2.4m side setback.
- East elevation side facing windows being to a non-habitable room (ensuite) mitigates overlooking adjoining properties primary living or private open space areas.

### Visual Impact from Bulk and Scale

- The proposal has been designed to have a variety of features including indentation and recesses and steps in the floor levels, and a range of materials and colours, with the 30.5% (2.90m) height variation providing for roof features and openings within the attic level, creating suitable articulation to the built form and building façade.
- A range of materials and finishes are proposed to be incorporated to provide visual interest and character to the development so as to reduce the visual bulk of the built form when viewed from surrounding properties and the streetscape.
- Compliance with established front building alignment, plus retained side and rear setback controls, ensures the proposed additional height provides a good level of building separation, access, landscaping, privacy, plus natural lighting, and ventilation for both the proposed alterations and additions development and adjoining properties.
- Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 0.59:1, being compliant with the numerical development standard, and well below the bulk and scale expressed as a maximum FSR contemplated for the site. This demonstrates that a potentially larger built form could be accommodated in comparison to that proposed.
- Visual bulk impacts from the approved garage studio are mitigated given the eastern neighbour has a blank wall interface with the site (Figure 3), and substantial screen plantings are present on the western boundary (Figure 4).





Figure 3: Illustrating black wall interface with adjoining easterly neighbour



Figure 4: Illustrating landscaped screen interface with adjoining westerly neighbour

As illustrated in the streetscape elevation (Figure 5), the proposed alteration and additions development is contained within a building envelope that is compatible with the recently approved built form adjoining the site. It is therefore considered that the proposed height of the development does not represent an overdevelopment of the site, or a development with a height that is not compatible with the context in which it is located. In this regard, it is considered that the proposed height and 30.5% (2.90m) variation would be compatible with the context of the surrounding built environment.





Figure 5: Cowper Street streetscape elevation, with adjoining approved multi-dwelling housing development (DA/686/2018)

#### View Impacts

- The topography of the local area, with dwellings to the south and opposite the site being at a higher elevation, plus retained side setbacks, and recessed attic level that provides adequate separation distance between the existing dwelling and neighbouring dwellings mitigates significant view impacts from the proposed 30.5% (2.90m) height variation to surrounding neighbours and the public domain.


#### Amenity

There are no internal amenity grounds that would determine that the additional height variation should not be granted, including:


- North facing windows provide for abundant access to northern sunlight to the attic bedroom and stairwell void.
- Provision of a high level of internal amenity, being a significant improvement on existing, as demonstrated by compliance with key amenity criteria within the *Randwick Comprehensive Development Control Plan 2013* (RDCP2013) for both the General Principles for Development and for Low Density Residential development types, particularly in regard to key amenity criteria within the DCP.
- Retention of the established front, side, and rear setbacks of the dwelling house, ensures the proposed additional height provides a good level of building separation, access, landscaping, privacy, plus natural lighting and ventilation for both the existing development and adjoining properties.
- The site is well serviced by public transport being within close proximity to numerous bus routes and stops located on Cowper Street being less than 280m walking distance, via a safe path of travel, with bus routes connecting to shopping centres, services, and facilities within major centres.

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

**Table 1: Assessment against the Objectives of the Development Standard and Land Use zone.**

<b>Consistency with the objectives of the height standard in the LEP</b>	
<b>Objectives</b>	<b>Assessment</b>
4.3(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p><b>Complies</b></p> <p>The proposed development supports the economic and orderly development of land, as intended by the RLEP2012 and RDCP2013 controls. The proposed alterations and additions are permitted in the R3 Medium Density Residential zoning of the site, and is consistent with the intent for development on the subject site. It is considered that the proposed alterations and additions to the built form represents a suitable development within a medium-density residential context.</p> <p>Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 0.59:1, being compliant with the numerical development standard, and well below the bulk and scale expressed as a maximum FSR contemplated for the site. This demonstrates that a potentially larger built form could be accommodated in comparison to that proposed.</p>
4.3(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	<p><b>Complies</b></p> <p>The site is not heritage listed and not in a heritage listed area. However, the site adjoins to the eastern boundary an item of heritage at No. 79-81 Cowper Street (1335, being "Peckham", Victorian mansion), in addition to a being opposite an item of heritage at Nos. 1-3 The Avenue (1452, being "Tayar", Italianate house), of local significant pursuant to RLEP2012.</p> <p>It is acknowledged that a 30.5% (2.90m) variation from the RLEP2012 numerical height standard of 9.5m is generated by the proposed roof attic addition. However, it is considered that the proposed alterations and additions are compatible with the local heritage context surrounding the site, including the adjoining approved multi-unit housing development at Nos. 79 – 81 Cowper Street (Figure 6) and the two – three-storey dwelling house opposite at No. 1 The Avenue (Figure 7).</p>  <p><b>Figure 6: Excerpt approved streetscape elevation of approved development at No. 79 – 81 Cowper Street (DA/686/2018)</b></p>

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<p>4.3(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p>	<p><b>Figure 7: Property to the south and opposite at No. 1 The Avenue</b></p> <p><b>Complies</b> An adverse impact on the amenity of the streetscape or adjoining or neighbouring land is avoided with the proposal not resulting in any additional visual or acoustic privacy impacts, visual impact from the height, bulk and scale, significant additional overshadowing, or loss of views than the existing dwelling house development.</p> <p>No impact to privacy is expected from overlooking as a result of the non-compliant roof height, with the roof attic sufficiently recessed from the floors below, and with a minimum 2.4m side setback, and east elevation side facing windows being to a non-habitable room (ensuite) to mitigate overlooking adjoining properties primary living or private open space areas.</p> <p>The orientation of primary openings to the front and rear of the dwelling ensures that visual and acoustic privacy is maintained to the eastern and western adjoining neighbours.</p> <p>As illustrated on the accompanying shadow diagrams the proposal maintains at least three (3) hours of direct sunlight between 8am and 4pm on 21 June to adjoining dwellings and to north-facing living areas and private open space of the proposed dwellings.</p> <p>View sharing for adjoining properties and the public domain is not unreasonably impacted by the proposed development given the topography of the site, with side setbacks providing adequate separation distance between the proposed development and neighbouring dwellings to the east and west, and the dwelling to the south (rear) being at a higher elevation than the subject site.</p>				
<p><b>Consistency with the objectives of the R3 Medium Density Zone</b></p> <table border="1"> <thead> <tr> <th>Objectives</th><th>Assessment</th></tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide</li> </ul> </td><td> <p><b>Complies</b> The proposed alterations and additions development is permissible in the R3 Medium Density zone.</p> <p>The proposal provides for additional residential accommodation in a medium-density environment which will increase the stock and range of housing available in the locality, contributing to improved housing choice and affordability.</p> </td></tr> </tbody> </table>		Objectives	Assessment	<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide</li> </ul>	<p><b>Complies</b> The proposed alterations and additions development is permissible in the R3 Medium Density zone.</p> <p>The proposal provides for additional residential accommodation in a medium-density environment which will increase the stock and range of housing available in the locality, contributing to improved housing choice and affordability.</p>
Objectives	Assessment				
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide</li> </ul>	<p><b>Complies</b> The proposed alterations and additions development is permissible in the R3 Medium Density zone.</p> <p>The proposal provides for additional residential accommodation in a medium-density environment which will increase the stock and range of housing available in the locality, contributing to improved housing choice and affordability.</p>				

<p>facilities or services to meet the day to day needs of residents.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• To protect the amenity of residents.</li> <li>• To encourage housing affordability.</li> <li>• To enable small-scale business uses in existing commercial buildings.</li> </ul>	<p>The proposal will provide high-quality contemporary residential accommodation with exceptional internal amenity for residents with no additional external amenity impacts to adjoining neighbours.</p> <p>The proposed height variation is therefore not considered to generate any inconsistency with the zone objectives.</p>
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Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard*

**Assessment:** The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental grounds to permit the variation in this instance including:

- The proposal is for a maximum height of 12.398m, which is a 30.5% (2.90m) variation from the numerical development standard of 95m, pursuant to the RLEP2012 statutory standard.
- It is considered that the additional height is a minor increase on the existing height, and the proposed FRS is significantly below the maximum for the site. In this regard, a dwelling with a bulk and scale consistent with the maximum FSR for the site would have more of an amenity impact than the proposed height non-compliance.
- As illustrated in the streetscape elevation (Figure 5), the proposed alteration and additions development is contained within a building envelope that is compatible with the recently approved multi-dwelling housing development (DA/686/2018) adjoining the site.
- Shadow diagrams accompanying this application indicate that the overshadowing impact from the 30.5% (2.90m) height variation is not significant, with three hours of sunlight maintained to north facing living areas and POS of the adjoining dwellings to the east and west, between 8am and 4pm during mid-winter.
- Visual and acoustic privacy impacts to adjoining neighbours from the 2.90m of additional height has also been carefully considered, with adequate separation distance between the proposed roof attic development, and neighbouring dwellings to the east and west, being recessed towards the centre and front (south) of the roof form.
- No impact to privacy is expected from overlooking as a result of the non-compliant roof height, with the roof attic sufficiently recessed from the floors below, and with a minimum 2.4m side setback.



- The proposal has been designed to have a variety of features including indentation and recesses and steps in the floor levels, and a range of materials and colours, with the 30.5% (2.90m) height variation providing for roof features and openings within the attic level, creating suitable articulation to the built form and building façade.
- Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 0.59:1, being compliant with the numerical development standard, and well below the bulk and scale expressed as a maximum FSR contemplated for the site. This demonstrates that a potentially larger built form could be accommodated in comparison to that proposed
- It is considered that the additional height is a minor increase on the existing height, and the proposed FRS is significantly below the maximum for the site. In this regard, a dwelling with a bulk and scale consistent with the maximum FSR for the site would have more of an amenity impact than the proposed height non-compliance.
- As illustrated in the streetscape elevation (Figure 5), the proposed alteration and additions development is contained within a building envelope that is compatible with the recently approved multi-dwelling housing development (DA/686/2018) adjoining the site.
- The topography of the local area, with dwellings to the south and opposite the site being at a higher elevation, plus retained side setbacks, and recessed attic level that provides adequate separation distance between the existing dwelling and neighbouring dwellings mitigates significant view impacts from the proposed 2.9m height variation to surrounding neighbours and the public domain.
- Provision of a high level of internal amenity, being a significant improvement on existing, as demonstrated by compliance with key amenity criteria within the *Randwick Comprehensive Development Control Plan 2013* (RDCP2013) for both the General Principles for Development and for Low Density Residential development types, particularly in regard to key amenity criteria within the DCP.

In this regard, it is reiterated that the proposed height variation is not responsible for any streetscape, overshadowing, privacy, view, heritage, or visual bulk impacts. On this basis, there are sufficient environmental grounds to permit the height variation in this instance.

#### Other Matters for Consideration

*4(a)(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*

**Assessment:** The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the R3 Medium Density zone.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with height variation.



The development is in the public interest given the proposed height variation provides for an additional bedroom in an accessible location, being in close proximity to public transport providing access to services and facilities located within local and major centres.

Given that the proposal is for alterations and additions that provide improvements to an existing dwelling house, there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:*

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

**Assessment:** The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed height allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk, or scale and without compromising the desired future character of the area.

The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

#### Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

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

**Assessment:** There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

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

#### Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at No. 77 Cowper Street and is requested to be looked upon favourably by the consent authority.

## Appendix 3: DCP Compliance Table

### 3.1 Section B2: Heritage Conservation

The relevant provisions under Section B2 have been addressed by heritage officer under Appendix 1.

### 3.2 Section C1: Low Density Residential

The DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R3	
<b>2.3</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	No change to existing	Yes
<b>2.4</b>	<b>Landscaping and permeable surfaces</b>		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% 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.	No change to existing	Yes
<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 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	No change to existing	Yes
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = 0.9:1</b>	0.6:1	Yes
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	11.69m	No  Refer to the Key Issues section of this report.
	i) <b>Maximum external wall height = 7m</b> (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	10.78m	No  Refer to the Key Issues section of this report.
<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:	No change to existing at ground and first floor.  Proposed second floor addition =	Yes

The DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> <li>- 900mm for allotments with primary frontage width of less than 7m</li> <li>- 1500mm for all other sites</li> </ul> iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	8.8m	
<b>3.3.2</b>	<b>Side setbacks:</b> Semi-Detached Dwellings: <ul style="list-style-type: none"> <li>• Frontage less than 6m = merit</li> <li>• Frontage b/w 6m and 8m = 900mm for all levels</li> </ul> Dwellings: <ul style="list-style-type: none"> <li>• Frontage less than 9m = 900mm</li> <li>• Frontage b/w 9m and 12m = 900mm (Gnd &amp; 1<sup>st</sup> floor) 1500mm above</li> <li>• Frontage over 12m = 1200mm (Gnd &amp; 1<sup>st</sup> floor), 1800mm above.</li> </ul> Refer to 6.3 and 7.4 for parking facilities and outbuildings	Proposed second floor addition = 2.6m (east) 4.3m (west)	Yes
<b>3.3.3</b>	<b>Rear setbacks</b> <ol style="list-style-type: none"> <li>Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</li> <li>Provide greater than aforementioned or demonstrate not required, having regard to:               <ul style="list-style-type: none"> <li>- Existing predominant rear setback line</li> <li>- reasonable view sharing (public and private)</li> <li>- protect the privacy and solar access</li> </ul> </li> <li>Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</li> <li>For irregularly shaped lots = merit assessment on basis of:-               <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> </li> </ol> Refer to 6.3 and 7.4 for parking facilities and outbuildings	No change to existing at ground and first floor.  The studio setback of 1.13m from Sydney Street is consistent with adjoining garage studios.	Yes
<b>4</b>	<b>Building design</b>		
<b>4.1</b>	<b>General</b>		
	Respond specifically to the site characteristics and the surrounding natural and built context - <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 proposed second floor addition is not suitably integrated into the roof form and fails to recognise the characteristics of a site in terms of the built context.	No

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The DCP Clause	Controls	Proposal	Compliance
<b>4.5</b>	<b>Colours, Materials and Finishes</b>		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	The proposed materials and finishes are appropriate for the site.	Yes
<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 must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The primary living area at ground level is located at the rear and orientated to the north. It will continue to receive a minimum 3 hours direct sunlight at the winter solstice.	Yes
	<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</li> </ul>	Based on the shadow diagrams submitted with the application, the additional shadow cast by the development does not impact any north facing windows on the adjoining properties. The proposal will not result in any unreasonable overshadowing impacts to private open space of the adjoining properties.	Yes

The DCP Clause	Controls	Proposal	Compliance
	the neighbouring allotments.		
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	<p>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:</p> <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> <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	The proposed design and layout provides satisfactory daylight and natural ventilation.	Yes
<b>5.3</b>	<b>Visual Privacy</b>		
	<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>	The south facing windows to the studio above the garage are designed as highlight windows to mitigate potential oblique views to the rear of the adjoining properties.	Yes
	<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>	The proposed balcony to the studio above the garage overlooks Sydney Street and does not pose a significant privacy risk to the adjoining properties.	Yes
<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</p>	The proposal is appropriately designed and sited to minimise noise	Yes



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The DCP Clause	Controls	Proposal	Compliance
	dwellings by: <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>	impacts to the adjoining properties.	
<b>5.5</b>	<b>Safety and Security</b>		
	i) Dwelling's main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	The proposed balcony adjoining the studio above the garage will increase casual surveillance of Sydney Street.	Yes
<b>5.6</b>	<b>View Sharing</b>		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	The proposal will not result in any undue view impacts on the adjoining properties.	Yes
<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: <ul style="list-style-type: none"> <li>- Frontage &gt;12m,</li> <li>- Consistent with pattern in the street;</li> <li>- Landscaping provided in the front yard.</li> </ul> v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	The existing garage at the rear of the site will be retained and continue to provide 3 vehicle parking spaces on the site.	Yes
<b>7.4</b>	<b>Outbuildings</b>		
	i) Locate the building behind the alignment of the front building façade, ii) Position to optimise backyard space and must not be located within the required permeable surfaces,	The site contains an existing detached garage at the rear fronting Sydney Street.	Yes

The DCP Clause	Controls	Proposal	Compliance
	<p>iii) Except for laneway development, outbuildings must be single storey only, and must not exceed a maximum height of 3.6m and wall height of 2.4m,</p> <p>iv) Outbuildings may be constructed to the side and rear boundaries where the external walls are finished and do not require frequent maintenance, there are no windows or openings facing the adjoining allotments and solar access to the adjoining dwellings is maintained,</p> <p>v) Where there is an existing detached garage at the rear of the allotment a first floor addition may be considered subject to the following measures;</p> <ul style="list-style-type: none"> <li>- Contain the upper floor level within the roof form as an attic storey,</li> <li>- Articulate the facades,</li> <li>- Provide an integrated landscape design with screen planting to visually soften the outbuilding,</li> <li>- Does not create excessive structural bulk as viewed from the adjoining properties,</li> <li>- Maintain adequate solar access to the adjoining dwellings, and</li> <li>- Maintain adequate privacy to the adjoining dwellings</li> </ul> <p>vi) Outbuildings may be used as habitable space, but must not be used as a separate business premises.</p>	<p>A first floor addition can be considered above an existing detached garage, subject to being in a roof form as an attic storey, appropriate articulation, minimal visual bulk and maintains amenity to the adjoining dwellings. The proposed studio above the garage is not contained within an attic storey as it will read as a separate level. Notwithstanding, the design is contextually appropriate for the site. However, the proposed second floor addition is not supported in its current form and the application in its entirety is recommended for refusal.</p>	

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**Responsible officer:** Thomas Mithen, Environmental Planner

**File Reference:** DA/507/2021