

# Randwick Local Planning Panel (Public) Meeting

Thursday 11 August 2022



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

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Thursday, 11 August 2022 at 1pm

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

#### **Address of RLPP by Councillors and members of the public**

*Privacy warning;*

*In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded.*

### **General Reports**

GR13/22	Changes to the delegations in relation to the conduct of appeals for the RLPP matters .....	1
---------	---	---

### **Development Application Reports**

D46/22	77 Denning Street, South Coogee (DA/901/2015/A).....	5
D47/22	22 Mears Avenue, Randwick (DA/558/2021) .....	35

Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## General Report No. GR13/22

**Subject: Changes to the delegations in relation to the conduct of appeals for the RLPP matters**

---

### Executive Summary

- At its meeting on 22 March 2018, the Randwick Local Planning Panel (Panel) resolved to delegate its functions in respect of development appeals to the General Manager. The resolution also required the Panel to be updated regularly on any current Land and Environment Court Appeals.
- This report responds to the request of the Chair of the Local Planning Panel to review the current delegation in relation to Appeals, including delegations, in order to provide greater certainty as to the conduct of Appeals for the Panel, Council and the community.
- The report recommends that the current delegation be revoked and that a new delegation be made, as per the recommendation in this report.

### Recommendation

- A. That Randwick Local Planning Panel (Panel) pursuant to Section 2.20(8) of the Environmental Planning & Assessment Act 1979 (EPA Act) revoke its current delegation in relation to the conduct of appeals.
- B. That the Panel pursuant to Section 2.20(8) of the EPA Act delegates to Council's General Manager, Director City Planning and Manager Development Assessment the functions of the Panel subject to Section 8.15(4) of the EPA Act with respect to the control and direction of Appeals, and the operational procedures documented in the Randwick Local Planning Panel Guidelines (as amended by point "C" below).
- C. That the Randwick Local Planning Panel Guidelines, dated 8 July 2021, be amended as follows:
  - Inclusion of Section 8 to read:

#### **8. Control and Direction of Court Appeals**

##### **8.1 Conditions and Limitations**

Pursuant to Section 2.20(8) of the EPA Act, the Panel delegates to Council's General Manager, Director Planning & Development and Manager of Development Control the functions of the Panel subject to Section 8.15(4) of the EPA Act in respect of the control and direction of Appeals and to the conditions and limitations described below:

- i. As required by Section 8.15(4) of the EPA Act, Council is to give notice to the Panel (electronically) of all Appeals relating to the determination or decision of the Panel or any deemed refusal within 7 days of the Appeal being served.
- ii. In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, either the General Manager, Director City Planning or Manager Development Assessment will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal within 5 business days of the notice of service of the appeal.

GR13/22

- iii. In the case of all Appeals relating to a determination or decision of the Panel, either the General Manager, Director City Planning and Manager Development Assessment will keep the Panel Chair that made the determination or decision (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.
- iv. In the case of an Appeal being lodged relating to a deemed refusal of a development application, that application shall be referred to the first practical meeting, following the date that the Appeal was served, for determination or decision by the Panel. If it is not practical to provide a report, the Chair (or the Chair's nominee) shall be consulted prior to any Statement of Facts and Contentions being filed with the Court. Should there be no opportunity to consult with, or a response to a draft Statement of Facts and Contentions not be received from, the Chair (or the Chair's nominee) at least two business day prior to the date required for the filing of the Statement of Facts and Contentions the General Manager, Director City Planning or Manager Development Assessment shall have delegation to settle the Statement of Facts and Contentions without consultation or a response.
- v. The Council shall circulate a report to all Panel members quarterly on the status of all Appeals relating to the determination or decision of the Panel and deemed refusals which would, but for the appeal, have come before the Panel. If an agreement under Section 34 of the Land and Environment Court Act has been made, the report shall include reasons sufficient to demonstrate how the Panel's determination was addressed in the Section 34 agreement.

**Attachment/s:**

Nil

## Purpose

At its meeting on 22 March 2018, the Randwick Local Planning Panel (Panel) resolved to:

- (a) ... *delegate its functions of control and direction of development appeals in respect of development for which it exercises the functions of the Council as consent authority to the General Manager.*
- (b) *the Panel be updated regularly on any current Land & Environment Court Appeals.*

The purpose of this report is to update the current delegation relating to the function of Land and Environment Court Appeals to provide greater certainty as to the conduct of Appeals, including consultation with the Panel in relation to Appeal matters. The report recommends revoking the current delegation of its function in relation to the conduct of appeals and replacement with a new delegation as detailed in the report.

## Discussion

Section 8.15(4) of the *Environmental Planning and Assessment Act 1979* (EPA Act) provides:

*(4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.*

Therefore, although Council would be the respondent in any appeal to the Land and Environment Court (LEC), its conduct of the class 1 proceedings would be subject to the control and direction of the Panel. This means that appeals to which section 8.15(4) applies would need to be reported to, and instructions obtained from, the Panel.

This process would be somewhat cumbersome and potentially contrary to the LEC's requirements that:

*The parties are to participate, in good faith, in the conciliation conference (see s34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference. [Para 47 Practice Note - Class 1 Development Appeals]*

To address this issue, on 22 March 2018, the Panel delegated to the General Manager, under s2.20(8) of the EPA Act, its functions for control and direction of development appeals in respect of development for which the Panel exercises the functions of the Council as consent authority.

Section 2.20(8) of the EPA Act provides:

*(8) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council. Section 381 of the Local Government Act 1993 does not apply to any such delegation.*

However, the current delegation of the function under s8.15(4) to the General Manager, cannot be sub-delegated by the General Manager, to give either the Manager Development Assessment or Director City Planning the function of direction and control under s8.15(4) of the EPA Act as s2.20(8) of the EPA Act expressly precludes a local planning panel from delegating to the General Manager the power to delegate the 8.15(4) Function.

For the Manager Development Assessment or Director City Planning to have the 8.15(4) Function (in addition to or instead of the General Manager), the Panel should revoke the current delegation, and replace it with a delegation to the Manager Development Assessment or Director City Planning.

In addition, the current delegation is broad and does not provide clear limitations on the exercise of the delegation in relation to matters such as the period within which the Panel is to be informed that

an Appeal has been lodged, the extent to which the Panel is to be consulted on the conduct of an appeal, that deemed refusals should be referred to a Panel meeting for determination and how the Panel is to be updated on Appeals.

### Strategic alignment

The relationship with our 2022-26 Delivery Program is as follows:

Delivering services and regulatory functions:	
Service area	Development Assessment
Function	Assessment of Development Applications
Delivery program commitment	Assess and determine Development Applications, Modification Applications and Review Applications under the Environmental Planning and Assessment Act 1979

### Resourcing Strategy Implications

Should the delegation not be provided, then there may be additional legal costs associated with the management of legal proceedings.

### Conclusion

To address the above issues, the Panel should, pursuant to Section 2.20(8) of the EPA Act revoke the current delegation of its function under Section 8.15(4) in relation to the conduct of appeals and replace it with a new delegation which delegates its functions in relation to the conduct of Appeals as set out in the Recommendation.

This new delegation will:

- improve the efficiency and effectiveness in the handling of Appeals;
- provide transparency and certainty about the role of Council's planning staff and the Panel in the conduct of Appeals;
- provide Council with the authority to enter into meaningful and good faith negotiations at Section 34 conciliation conferences consistent with Section 34(1A) of the LEC Act.; and
- ensure that the Panel is informed of the conduct and outcome of Appeals.

---

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

**File Reference:** F2018/00142

## Development Application Report No. D46/22

**Subject:** 77 Denning Street, South Coogee (DA/901/2015/A)

- Proposal:** Section 4.55(2) Modification to the development consent with amendments to the internal layout of the dwelling including relocation of the living and bedrooms spaces, deletion of the internal courtyards, minor extension to the west, a new eastern balcony at First Floor level, increased excavation at the Lower Ground Floor level, and reinstatement of the swimming pool and associated decking which was deleted by condition. Original consent: demolition of all existing structures on site and construction of a new three storey dwelling house, rear in-ground swimming pool, associated site and landscaping works.
- Ward:** East Ward
- Applicant:** Mr Jamie Samaha
- Owner:** Mr Jamie Samaha
- Cost of works:** N/A
- Reason for referral:** 10 or more unique submissions by way of objection were received.

### Recommendation

That the RLPP grants development consent under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/901/2015 for demolition of all existing structures on site and construction of a new three storey dwelling house, rear in-ground swimming pool, associated site and landscaping works at No. 77 Denning Street, South Coogee, in the following manner:

- **Amend Condition 1 to read:**

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

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>
A.02B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.03B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.04B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.05B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.06B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.07B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.08B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.09B	Madeline Blanchfield Architects Pty. Ltd.	June 2016
A.14B	Madeline Blanchfield Architects Pty. Ltd.	June 2016

<b>BASIX Certificate No.</b>	<b>Dated</b>
674120S	16 December 2015

**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:

D46/22

D46/22

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
A.001 (Site Analysis Plan), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.002 (Lower Ground Floor Plan), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.003 (Ground Floor Plan), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.004 (First Floor Plan), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.005 (Roof Plan), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.006 (South Elevation), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.007 (North Elevation), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.008 (West Elevation), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.009 (East Elevation), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022
A.0010 (Section AA), Revision D	Madeleine Blanchfield Architects	26 May 2022	31 May 2022

<b>BASIX Certificate No.</b>	<b>Dated</b>
1172325S	03 February 2021

- **Amend Condition 2(a) to read:**

**Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a. The east facing first floor **Kitchen Dining area** window must have a minimum sill height of 1.6 metres above the finished floor level. Alternatively, the windows is to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height.

- **Delete Conditions 2(d) and 2(e):**

**Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - d. **Deleted.**
  - e. **Deleted.**

- **Add Conditions 2(f), 2(g), 58 and 59 to read:**

2. The approved plans and documents must be amended in accordance with the following requirements:
  - f. The following windows must have a minimum sill height of 1.6 metres above the finished floor level. Alternatively, the windows is to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
 

Southern Elevation – Ground Floor Level

    - Window W03 to the En-suite;
    - Window W04 to Bedroom 3;
    - Window W05 to the Bathroom;



Northern Elevation – First Floor Level

- Window W06 to the Powder Room;
  - Windows W07 and W08 to the Dining Room.
- g. Planting within the eastern planter box to the south of the balcony at First Floor level is to be deleted and replaced with a pebbled roof. The parapet height of the eastern planter box and balcony at First Floor level is to be a maximum of RL52.40 (a 200mm parapet).
58. The Kitchenette on the Lower Ground Floor level is not to contain any cooking facilities.
59. The entire Lower Ground Floor level must not be used for separate residential accommodation or as a separate residential occupancy at any time.

**Attachment/s:**

Nil

**D46/22**

D46/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as more than ten (10) unique submissions by way of objection were received.

The proposal seeks to modify the development consent with amendments to the internal layout of the dwelling including relocation of the living and bedrooms spaces, deletion of the internal courtyards, minor extension to the west, a new eastern balcony at First Floor level, increased excavation at the Lower Ground Floor level, and reinstatement of the swimming pool and associated decking which was deleted by condition.

The key issues associated with the proposal relate to whether the development is substantially the same development, variations to the FSR and building height, and amenity impacts upon adjoining properties with regards to view loss, privacy and solar access. In response to concerns raised by Council, the proposal was amended during the course of the assessment. As discussed in detail within the assessment report, the amended development is not considered to result in any unreasonable impacts upon adjoining properties with regards to view sharing and overshadowing, and the proposal achieves a reasonable balance between privacy and views. Furthermore, it is considered that Council can be satisfied that the proposed development is substantially the same to that which was originally approved and is not in contradiction to the circumstances of the original approval.

The proposal is recommended for approval subject to non-standard conditions in relation to additional privacy measures, and the use of the Lower Ground Floor level which is not to be used for separate habitation.

## 2. Site Description and Locality

The subject site is known as 77 Denning Street, South Coogee and has a legal description of Lot 6 in Deposited Plan 6772. The site is irregular in shape, being generally rectangular with an angled front and rear boundary, and has a total area of 591.6m<sup>2</sup>. The site is located on the eastern side of Denning Street. Vehicular and pedestrian access is gained via the 16.765m wide frontage to Denning Street. The site experiences a fall of approximately 7.49m from the front western boundary down towards the rear eastern boundary, with an average slope of approximately 19.7%.

The site is zoned R2 - Low Density Residential and is currently occupied by an existing one to two storey dwelling house with attached garage. The property is surrounded by residential properties to the north, south, east and west. The Tasman Sea is located approximately 300m to the east of the site, with Wedding Cake Island located to the far north-east. Water views are currently obtained from the subject site and surrounding properties from north-north-east through to south-east incorporating Wedding Cake Island and the distant headlands to the north. There is no prevailing architectural style within the existing streetscape which comprises a variety of styles and includes older and newer developments. The existing streetscape is primarily dwelling houses or semi-detached dwellings, and there is an existing dual occupancy adjoins the site to the north. Due to the steep topography of the site and surroundings, the existing buildings are generally two to three storeys, stepped down the sites in accordance with the topography. RLEP 2012 identifies the site as being within a Foreshore Scenic Protection Area.

## 3. Relevant history

### Details of Current Approval

Development Application DA/901/2015 for demolition of all existing structures on site and construction of a new three storey dwelling house, rear in-ground swimming pool, associated site and landscaping works was approved by Council on 9 September 2016.

### Subject Modification Application

Modification application DA/901/2015/A was lodged with Council on 17 February 2021. Due to the nature of the proposed works which involved primarily internal alterations and minor external changes to the built form, no formal internal referrals were considered necessary. However, as a result of the changes to the floor level of the garage, the proposal was referred to Council's Development Engineer who confirmed that driveway design alignment levels could be retained.

Initial concerns were raised with the Applicant regarding whether the proposed development is "substantially the same" as that which was approved given the reconfiguration of the floor plans and the increased height. A response was provided by the Applicant on 04 May 2021 which comprised a letter from the Applicant's Solicitor which concludes that the development as modified is substantially the same development as that which was originally approved.

On 26 July 2021, a response to the submissions received was provided by the Applicant addressing the concerns raised in submissions. Amended plans were also provided which reduced the FSR and provided additional privacy measures.

In response to concerns raised regarding view loss, height poles were erected at the subject site on 18 January 2022, a site visit to the neighbouring property at 79 Denning Street was undertaken on 21 January 2022. Further to the erection of the height poles, and in addition to the view loss concerns, Council issued a RFI to the Applicant raising concerns regarding the FSR, height, side setbacks, privacy and requested clarification regarding the proposed levels of the rear yard and swimming pool area.

As a result of the ongoing consultation between the Applicant and Council, amended plans were submitted on 31 May 2022. The amendments include a decrease to the overall height and FSR, an increased side setback for the upper level, reduction to the First Floor level balcony and relocation of the balcony to be inset to the First Floor level, reconfiguration of the Laundry and inclusion of a window, and an enclosed plant area within the garage. The amended architectural plans were accepted by Council, and the assessment is based on the amended plans dated 26 May 2022.

## 4. Proposal

The subject application seeks consent for the following modifications:

#### **Lower Ground Floor**

- Lower the approved FFL from 45.46 to FFL 45.10 for internal rooms and outdoor terrace. The Floor level of the existing lower ground floor level is FFL 45.51 and the adjoining patio is approximately FFL45.2, so there will be negligible change from the existing levels.
- The level lawn level adjacent to the outdoor terrace will also be FFL45.10 which similarly corresponds to the existing patio. The retaining wall will be removed and a new retaining wall which is parallel to the building façade proposed.
- Reconfigure internal layout and increase area of excavation to accommodate increased living areas, guest bedroom, sauna/powder room, cellar, and a new lift. A spiral staircase will replace the approved standard staircase. A new WC will be inserted within the southern façade with access from the garden. Increased screening will be provided at both sides of the outdoor terrace.
- The proposed swimming pool and adjacent deck to be lowered from RL44.62 to RL44.38. The pool level has been stepped down the site to reflect the site's sloping topography to the rear. The pool depth is restricted by the sewer line located underneath. The position of the pool minimizes disturbance to the slope by only requiring minor excavation for footings.

#### **Ground Floor**

- Internal reconfiguration to accommodate bedroom level instead of the approved living level. Living areas have been relocated to the first floor so they can take advantage of ocean views.
- The overall floor level has been reduced from FFL 49 to FFL 48.88, and a floor to ceiling height of 2.9m is achieved.
- The central courtyard is to be replaced by an internal spiral staircase.
- The garage width has been reduced.
- The garage door has been reduced to 5.6m.
- A new plant area is provided adjoining the garage.
- On the northern façade a doorway will replace a window to provide external access from the laundry, and an additional window is proposed to the Laundry.
- On the southern façade there will be three new windows to reflect the internal reconfiguration with screening to 1.6m (this addresses privacy issues raised under Condition 2(e) of the Consent).
- The east-facing deck is to be reduced in width and the approved planters will provide screening to adjoining properties (which addresses Condition 2b of the Consent).
- New lift.

#### **First Floor**

- Reconfiguration of internal layout to accommodate main living areas.
- The overall floor level has been raised from FFL 51.9 to FFL 52.2.
- The central void will be replaced by increased floor area and spiral staircase.
- The west-facing courtyard area will be increased with the removal of a bathroom.
- Indent for previously approved drying court along northern façade infilled to accommodate a powder room.
- Three new windows along northern façade.
- New deck to be located along eastern façade adjacent to the main indoor living area.
- Planters to be located within exposed roof to level below.
- New lift.

#### **Roof form**

- Two new circular skylights and a rectangular skylight are proposed.
- Approved solar panels are to be repositioned.
- Position of chimney slightly relocated.
- Maximum height increased from RL55.05 to RL55.75.

By virtue of the proposed modifications, the application also seeks amendments to or deletion of the following conditions:

- Condition 2(a) in relation to the room usage of the associated window;
- Condition 2(c) in relation to the deletion of the swimming pool and associated decking;
- Condition 2(d) in relation to the level of the rear lawn;
- Condition 2(e) in relation to the installation of new windows at the First Floor level.

## 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Consultation Plan. As a result of the notification process, submissions were received from or on behalf of the following properties:

- 75 Denning Street, South Coogee

Issue	Comment
<u>Visual Privacy</u> Concerns regarding visual privacy, with particular regards to the change from a bedroom to a dining room with balcony. Privacy concerns from the proposed balcony into the living areas of both Units 1 and 2 within No. 75.	See Key Issues for further discussion.
<u>Acoustic Privacy</u> Concerns regarding noise impact from the proposed balcony.	See Key Issues for further discussion.
Concerns regarding the extent of the changes and whether the proposal is a modification. The amended proposal looks like a new house with separate unit downstairs.	See Section 6.1 for further discussion.

- 79 Denning Street, South Coogee

### Town Planner on behalf of the owners of 79 Denning Street

Issue	Comment
<u>View Loss</u> Concerns regarding the First Floor level of the development and associated view loss impacts, including from the new balcony, the squaring of the rear alignment, and increased floor heights.	See Key Issues for further discussion.
The resultant FSR and Height dictates the location of the First Floor level balcony beyond the approved rear setback, which impacts upon the amenity of the neighbouring property.	See Key Issues for further discussion.
<u>Visual Privacy</u> As a result of the internal reconfiguration and the new balcony, the proposed development shall result in privacy impacts upon the adjoining property. The proposed planter is not considered to be sufficient to mitigate privacy impacts. Change to the eastern window from a bathroom to the dining area	See Key Issues for further discussion.
<u>Acoustic Privacy</u> Concerns regarding noise impacts from the relocation of the living areas and the proposed balcony.	See Key Issues for further discussion.



D46/22

Issue	Comment
Concerns regarding the use of the lower ground floor level as a secondary dwelling, given that the level includes a kitchen area.	See Key Issues for further discussion.
Concerns regarding the levels of the rear yard and pool, and associated solar access and privacy impacts. Request that the RL be no higher than RL44.00 as per the original approval.	See Key Issues for further discussion.

#### Hones Lawyers on behalf of the owners of 79 Denning Street

Issue	Comment
Concerns regarding whether the modified proposal is substantially the same as the development for which consent was granted.	See Section 6.1 for further discussion.

#### Property owners of 79 Denning Street

Issue	Comment
<u>View Loss</u> Concerns regarding impact upon view corridors from the First Floor level living area and adjoining balcony as a result of the proposed modifications.	See Key Issues for further discussion.
<u>Visual Privacy</u>	See Key Issues for further discussion.
<u>Acoustic Privacy</u>	See Key Issues for further discussion.
Concerns regarding the infill of the internal courtyard as GFA, and the extension of the building to the rear.	See Key Issues for further discussion.
<u>Solar Access</u> Concerns regarding overshadowing from the increase in floor level heights with particular regards to the Ground Floor deck and screening.	See Key Issues for further discussion.
<u>Trees</u> The submission notes that the existing trees can be managed to improve view corridors through cutting/pruning and therefore the relocation of the living space to the upper level is not necessary. Concerns regarding the decline and death of the Banksia tree on Denning Street which was to be retained, and request for replacement of the tree.	Noted.  With regards to the street tree which has died. While it is noted that this tree was conditioned to be retained under the original consent, the proposed modifications do not propose any changes that would impact upon the street tree and the application does not specifically seek deletion of this condition. As such, it is considered that the current status of the tree is a separate matter outwith the scope of this application.
<u>Rear Yard</u> Concerns regarding the proposed levels of the rear yard and associated solar access and privacy impacts. Concerns regarding stormwater run-off as a result of the modified land levels. Concerns regarding proposed levels and consistency with the original DA.	See Key Issues for further discussion.
Substantially the same should be a new DA Particular concerns in relation to the reconfiguration and relocation of the living and bedroom areas, and the new proposed balcony.	See Section 6.1 for further discussion.

Issue	Comment
The proposal does not align with the original approval and the reasons given by the consent authority.	See Section 7.2 for further discussion.
The two properties at 79 and 77 are different in context, including size and length.	It is acknowledged that each site and development is different in context and therefore each application is assessed on its own merits in accordance with the applicable planning controls.
Concerns regarding the extent of information provided with the application, including on the architectural drawings, in relation to the approval for No.79 and the original conditions of the development consent for 77.	Council has access to the approved plans for No. 79 Denning Street which have been utilised in the assessment of the subject application. The original conditions of consent which requirement amendments to the proposal have also been noted and considered in the assessment.

#### Legal Advice from Patrick Larkin SC on behalf of the owners of 79 Denning Street

Issue	Comment
Assessment of whether the modified proposal is substantially the same as the development for which consent was granted.	See Section 6.1 for further discussion.

#### Legal Advice from Patrick Larkin SC on behalf of the owners of 79 Denning Street

Issue	Comment
Review of Applicant's legal advice regarding the substantially the same test, and concerns regarding meeting this threshold.	See Section 6.1 for further discussion.

During the course of the assessment of the application, a total of fifteen (15) submissions were received in relation to the proposed development, of the submissions received, twelve (12) were considered to be unique submissions.

#### 5.1. Renotification

Amended plans were received by Council on 31 May 2022. The proposed amendments involved the following:

- The rear First Floor balcony pulled back in a westerly direction to align with the edge of the planters/approved roof;
- Increased southern side setback at the First Floor level;
- Increased southern side setback to the balcony at First Floor level;
- Enclosure of the plant room within the garage;
- Reconfiguration of the Laundry and a new window for ventilation and internal drying;
- Reduction to the overall height;
- Reduction to the FSR.

Due to the proposed amendments resulting in a similar or lesser impact to that which was originally proposed, in accordance with Council's Community Participation Plan, re-notification of the application was not required. All submissions received in relation to the application have been considered in the assessment.

## 6. Section 4.55 Assessment

The subject modification application is made pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended. Under the provisions of section 4.55(2), a consent authority may modify the consent if the development satisfies the following:

- a) *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*
- b) *it has consulted with any relevant public authorities or approval bodies, and*
- c) *it has notified the application & considered any submissions made concerning the proposed modification*

### 6.1. Substantially the Same Development

Several concerns were raised in submissions regarding whether the proposed development as modified is substantially the same development to that which was approved as required by s4.55(2)(a) of the EP&A Act.

Legal advice was submitted from both the Applicant and the objector at 79 Denning Street regarding the substantially the same test which have been considered in the assessment of the application.

#### Legal Advice

The objector submitted initial legal advice on 1 April 2021 from Hones Lawyers which notes that a quantitative and qualitative assessment must be undertaken and that continuation of the same use does not necessarily mean that the development is substantially the same. Reference is made to the matters of *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 433 NSWLR 468 at 446 and *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 which have been long established caselaw assisting in assessment of whether the development is substantially the same. The advice argues that the most significant changes relate to the increase in floor space, and that the variation to the FSR alters the original circumstances of the approval in which a clause 4.6 would have been required. Additionally, in consideration of the changes which involve increased height, reconfiguration, reduced side setbacks, increased bulk and scale, alterations to the facades, and reinstatement of the swimming pool, and the additional amenity impacts the proposal cannot be said to be substantially the same.

Further legal advice was submitted by 79 Denning Street on 14 April 2021 that argues that the proposed modification is inconsistent with the provisions of s4.55(2) in relation to the development being substantially the same, and s4.55(3) in relation to the reasons of the original approval. The advice notes that the original DA was amended with a reduction to the height and building envelope, and resolution of the view sharing, which resulted in the approval. The advice references the matter of *Agricultural Equity Investments v Westlme (no 3)* [2015] NSWLEC 75. The advice also notes that a comparison of more than just the physical features is required, and that the qualitative aspects of the development as well as the circumstances of the original approval should be taken into consideration. The advice raises concerns regarding the proposed balcony which was not part of the original consent and is a critical element. Reference is made to *FPG No.2 v Randwick City Council* [2018] NSWLEC 1300 which considered that the installation of a new roof terrace was not considered to be substantially the same. The submission concludes that they are not of the opinion that the development is substantially the same to that which was approved as a result of the proposed changes.

In response to the objections received, the Applicant provided legal advice from Mills Oakley on 3 May 2021. The Applicant's legal advice argues that the proposed amendments do not impact the "essence" of the approved development, relating primarily to internal reconfiguration of the floor plans and subsequent associated changes, and reinstatement of the swimming pool. Reference is also made to the matters of *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 433 NSWLR 468 at 446 and *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280. Furthermore, the advice refers to two (2) other court matters (*Ahmad Corp Pty Ltd v Fairfield*



*City Council* [2018] NSWLEC 1526 and *AG Kellyville Pty Ltd v The Hills Shire Council* [2020] NSWLEC 1205) in order to demonstrate the extent of changes that can still be considered to be defined as “substantially the same”. Council notes that the two (2) matters referred to are different in context to the proposed development relating to large scale medium density developments, however do highlight that substantial changes to a built form can still result in a development being considered sustainably the same. The advice notes that the development as viewed from the street would be imperceptible when compared to the approved development, and that “*the amendments proposed do not materially alter the form or substance or appearance of that which has already been approved*”. Ultimately the advice concludes that the development can be considered to be substantially the same.

In response to the Applicant’s legal advice, further legal advice was submitted by 79 Denning Street from Woolf Associates on 4 February 2022. The advice considers the Ahmad and AG Kellyville matters referred to by the Applicant’s solicitor noting that this was different scenarios to the proposed development. The advice argues that the proposed modifications would result in significantly different impacts to that which was approved with particular regards to privacy and view loss. The submission conclusion notes that “*the inquiry should identify the material and essential features of the originally approved and modified developments in order to undertake the comparative exercise required*”, with particular regards to the introduction of the balcony and planter box, and concludes that the proposal fails the substantially the same test.

It is clear from the caselaw and court matters referenced that every application must be assessed on its own merits, as the circumstances of every approval is different. However, it is apparent from all the legal advice submitted and caselaw that there are fundamental components in considering the substantially the same test that should be applied.

#### Assessment of Substantially the Same Test

To establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council* [1999] NSW LEC 280, which provides the following judgement:

*“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....*

*....The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted).*

Development application DA/901/2015 originally approved demolition of all existing structures on site and construction of a new three storey dwelling house, rear in-ground swimming pool, associated site and landscaping works at the subject site. The subject application seeks to modify the development involving an increase to the size of the Lower Ground Floor level, minor extension to the east at the First Floor level, deletion of the internal courtyard and replacement with floor space, a new eastern balcony and planter at the First Floor level, internal reconfiguration of the dwelling including changes to use of rooms/spaces, increased building height and reinstatement of the pool area.

Quantitatively, the proposed modifications shall result in an increased building height from 9.74m to 10.44m (increase of approximately 7% and variation to the height standard of 9.89%), an increased external wall height as a result of the overall height increase, and an increased FSR from 0.65:1 to 0.71:1 (increase of approximately 9.6%). The increased FSR can largely be attributed to the additional GFA at the Lower Ground Level and the infill of the internal central courtyard. The additional floor space at the Lower Ground Floor level shall be located underground, excavated further into the site, and as such shall not be visible from the public domain or adjoining properties. The infill of the courtyard is also contained entirely inside the building, and as such the increased FSR shall not result in any change to the overall visible building envelope, with the exception of the minor extension to the west and reconfiguration of the courtyard space. However, it is considered that the modification to the front western façade shall not fundamentally alter the visual presentation

of the dwelling as viewed from Denning Street. The building height shall be increase by 700mm in order to provide greater internal ceiling heights and amenity, which is approximately 7% higher than that approved. As such, while there shall be an increase in GFA and height, externally the built form will not be readily discernible from that which was approved.

There are some changes proposed to the materiality, colours and finishes of the development, however it is noted that the original materials and colours were not approved with a condition imposed requiring details to be provided to Council for approval prior to the Construction Certificate. This condition shall be maintained to ensure the approved materials, colours and finishes shall be consistent with the provisions of RDCP 2013.

Furthermore, the approved dwelling provided the following:

- Double Garage;
- Open-plan Living/Dining/Kitchen area including Butlers Pantry;
- Study;
- Rumpus Room;
- Powder Room;
- Four (4) Bedrooms,
- Laundry;
- Three (3) Bathrooms;
- Secondary Living/Dining space.

While the proposed modification seeks to relocate the living and bedroom areas, with the exception of an additional bedroom and bathroom on the Lower Ground Floor level, the number of rooms within the dwelling shall be consistent with that approved, with no change to the use of spaces proposed.

As such, quantitatively the proposed modifications are not considered to be a substantial alteration to the approved development. Furthermore, the development as modified continues to fall within the scope of the original description, being demolition of all existing structures on site and construction of a new three storey dwelling house, and retains the approved land use of the site.

One of the primary concerns in both the submissions and legal advice is the introduction of the new balcony at the First Floor level. The inclusion of a balcony (or use of an approved area as trafficable area) under a modification application is not uncommon. As discussed in the Applicant's legal advice, a full additional storey can be considered to be substantially the same, and therefore the built structure alone cannot determine whether the test is met. The test requires Council to consider not only the physical features but undertake a quantitative and qualitative assessment of the development including the environmental impacts and consideration of the circumstances of the original approval.

The proposed modifications are primarily to improve the amenity of the new dwelling, providing increased ceiling heights and to take advantage of the water views by relocating the living areas.

As discussed in section 7.2, any modification of an approved development would likely alter the amenity and environmental impacts associated with the development and thus just because the modifications may result in additional impacts does not necessarily mean that the development cannot meet the substantially the same test. Consideration must be given to the reasons for the original approval as well as the associated amenity impacts.

The proposed modifications are not considered to result in any adverse visual bulk as viewed from adjoining properties and the public domain, with the external changes relatively minor in nature. Furthermore, as discussed in the Key Issues section, the proposal is not considered to result in any adverse acoustic privacy impacts, with acoustic amenity improved as a result of the proposed relocation of the living spaces. While new window openings are introduced, subject to the recommendations the proposal as modified is not considered to result in any adverse visual privacy impacts.

As discussed in detail in section 7.2 of the report, the original assessment did not consider the use of the roof at the First Floor level as trafficable area, and therefore it cannot be said that this would not have been supported were it originally proposed. As such, the impacts associated with this component of the modification have been considered. The amenity impacts have been assessed, and the detailed assessment has found that when assessed against the provisions of RDCP 2013, the proposed modifications would not result in any unreasonable impacts upon adjoining properties, with particular regards to visual privacy and view loss. Furthermore, the circumstances of the original approval are discussed in detail under section 7.2, and it is considered that the proposed modifications would not be in contradiction to or inconsistent with the reasons given for the granting of the original consent.

#### *Reinstatement of the Proposed Swimming Pool*

It is noted that deletion of the proposed pool and associated structures was not imposed as a result of a fundamental issue with this component but was in relation to impacts upon the existing tree within the rear yard and adverse amenity impacts upon adjoining properties in relation to the height of the proposed pool and decking. As discussed under the Key Issues, the reinstatement of the pool is not supported in this instance as it has not been demonstrated that the existing tree could be safely retained and further amendments would be required to ensure privacy, visual bulk and overshadowing is minimised.

The term “substantially” means “*essentially or materially having the same essence*”.

It is considered that the intent of the proposed development as modified, which seeks to amend the approval to improve the overall amenity of the development, remains the same as the approved development, providing for a part two (2) storey, part three (3) storey dwelling house. Although the floor plans have changed, it is considered that the essence of the use is consistent with that approved.

In view of the above, and the judgement in *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, it is considered in this instance the fundamental characteristics and essence of the development would remain the same and as such Council can be satisfied that the resultant development is considered to be substantially the same development as originally approved.

### **6.2. Consultation with Other Approval Bodies or Public Authorities**

The subject application did not require referral to any approval bodies or public authorities.

### **6.3. Notification and Consideration of Submissions**

The application was notified in accordance with Council's Community Participation Plan. As a result of the notification period and during the course of the assessment, a total of fifteen (15) submissions were received. The submissions have been considered in the assessment of the application.

In view of the above, it is considered that the proposed development is consistent with the provisions of section 4.55(2) of the EP&A Act and the application can be modified.

## **7. Matter for Consideration under Section 4.55(3) of the EP&A Act**

Section 4.55(3) of the EP&A Act states that in determining a modification application, the consent authority must take into consideration the matters referred to in s4.15(1) of the EP&A Act (as are of relevant to the subject application) and must also take into consideration the reasons given by the consent authority in granting the original consent.

### **7.1. 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.

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1)(a)(i) – Provisions of any	<b>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</b>

D46/22

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	<p>Clause 55A 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 amended BASIX certificate.</p> <p>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 and the R2 – Low Density Residential zoning.</p> <p>See further discussions under key issues below.</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 proposal remains consistent with the objectives and controls of the Randwick Comprehensive DCP 2013. See discussion in key issues below.
Section 4.15(1)(a)(iia) – 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	The issues raised in the submissions have been addressed in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 7.2. Circumstance of the Original Approval

Section 4.55(3) of the EP&A Act requires consideration of the reasons given by the consent authority in granting the original consent. Furthermore, in considering whether the proposal as modified is substantially the same development, the developments must be compared in their proper contexts, including the circumstances in which the development consent was granted.

The objections received raise concerns regarding the development as modified being inconsistent with the intent and reasons of the original approval, with particular regards to the amendments made to address privacy and view loss concerns, which resulted in approval of the development. The submissions also raise concerns regarding non-compliance with the height and FSR standards, in which the original development complied.

### Building Height

While the height was reduced as a result of the amendments that occurred during the course of the original assessment, the overall building height was not considered to be an essential element in determining the application, in that the changes to the height were primarily in relation to the levels of the floors, rather than the overall height of the building. The RFI in the original application recommended changes to the height in relation to view sharing as follows:

- *The view will be obscured from the rear ground floor level and the parapet above on the south-eastern portion of the subject site. Amendments should include lowering the floor to floor heights of the ground floor level by approximately 1 metre resulting in the reduction of the building height by 1 metre.*

The original assessment did note that the reduced height by 1m would ensure compliance with the maximum building height standard, however this was not considered to be a determining factor in the approval of the application.

Furthermore, the original proposal supported a variation to the external wall height control on the basis that:

- the two (2) storey scale from the street will sit below the building height plane between No. 75 and 79 and shall maintain a suitable scale;
- the three (3) storey scale at the rear is appropriate in context;
- the wall height breach shall not attribute to any additional visual bulk as viewed from the neighbouring properties, with the First Floor level setback from the lower levels and a variety of materials provided; and
- the proposal would not contribute to any adverse environmental impacts with regards to privacy, solar access and views.

The proposal (as modified) results in an increased breach of the wall height due to the increased building height, however is considered that the proposal shall remain consistent with the above in that the proposed height shall still be comparable to the adjoining properties (No. 75 Denning Street has a maximum height of RL55.77 and No. 79 Denning Street is RL57.39, with the proposal having a maximum height of RL55.75), there is no change to the number of storeys, and the additional breach shall not result in any unreasonable amenity impacts upon surrounding properties. Detailed assessment of the increased height and external wall height is provided under the Key Issues in Section 8 of the report.

### Floor Space Ratio

Similarly, the objector argues that the inclusion of the internal courtyards in the original approval pushed the development towards the east, and that the infill of these areas (resulting in non-compliant FSR) would be against the intent of the original approval. The RFI in the original



application also considered the rear setback and internal courtyards in relation to view loss and recommended the following:

- *The view will be obscured by the rear first floor level including bathroom 1 and bedroom no. 1 on the south-eastern portion of the subject site. Amendments should include incorporating an additional setback of 2.3 metres from the rear building alignment of the bathroom and bedroom. The increased rear setback will ensure the proposed development maintains a consistent rear building alignment as the existing dwelling. Any loss of floor space can be redistributed into the site by deletion of the central courtyard spaces. The central courtyard spaces effectively extends the building envelope to the east and contributes to the extensive view loss impacts to the neighbouring dwellings.*

The original scheme in DA/901/2015 proposed a minimum rear setback of 12.3m to the GF level (10.25m to the balcony), and 14.25m to the First Floor level, with the Ground Floor level extending beyond the rear alignment of the adjoining properties. As stated above, the original Assessment Officer acknowledged that the inclusion of the courtyards extended the building to the east, and suggested that the internal courtyards be removed to offset the loss of FSR required for an increased rear setback. However, the Applicant maintained the internal courtyards while still providing an increased rear setback of an additional 1.15m at Ground Floor level and 1.2m-2m at the First Floor level. As such, while it is acknowledged that the original development complied with the FSR standard, this was not considered to be a critical element in the approval of the application. The variation to the FSR proposed under the subject modification application is assessed in detail under the Key Issues in Section 8.

#### Rear Setback and Proposed First Floor Level Balcony

There shall be no change to the rear setback of the approved development, with the rear building alignment of the eastern external walls and roof parapet maintained at the Ground Floor and First Floor levels. However, the proposal does include a new balcony at the First Floor level to the east. The approval of the development assessed and supported the rear setback in consideration of the view loss impacts.

Concerns were raised in submissions and legal advice which state that the proposed balcony is a critical element which did not form part of the original consent. Reference is also made to the LEC matter of *FPG No.2 v Randwick City Council* [2018] NSWLEC 1300 in which a roof terrace was found to result in a development that was not substantially the same. However, it is noted that in the matter of FPG No.2, the proposal related to a Residential Flat Building. In that instance, Council contended that the application was not substantially the same as the “*approval of the original development was subject to the deletion of the roof terrace and associated structures due to the additional massing associated with the terrace and its adverse impacts. That deletion was required by condition 2a.*” and the judgement noted that the original development was approved specifically on the basis that it had no roof terrace.

No balcony or trafficable roof space at the First Floor level was ever proposed in the original application and as such no assessment or consideration of this was undertaken. Additionally, neither the assessment report nor the conditions of consent provide any comment regarding if the roof was to be trafficable i.e. there is no condition stating that the roof is to be non-trafficable, therefore it can be assumed that due to the design this was never a consideration in the original assessment. As such, the FPG No. 2 matter is considered to be different in context. In the subject application, the proposed balcony is a minor extension of the First Floor level into the roof level below, essentially the Applicant effectively seeks to amend a portion of the roof to trafficable area by way of a new balcony which is not considered to be in contradiction to the reasons of the granting of the original consent.

#### Amenity Impacts

Any modification to a development, including minor modifications, could alter the amenity impacts upon neighbouring properties in terms of overshadowing, privacy, visual amenity and views. The purpose of section 4.55 of the EP&A Act is to allow an Applicant to make amendments to an approved development (provided the application is substantially the same development), and as such the associated impacts must be considered. However, it is not considered that a modified development that may result in any additional impacts would fail the substantially the same test. The original approval was supported as there were no unreasonable amenity impacts upon

neighbouring properties, and therefore if it can be demonstrated that there are no unreasonable impacts as a result of the proposed modifications, then the proposal would not be considered to be inconsistent with the reasons for the granting of the original consent.

A detailed assessment of the amenity impacts as a result of the proposed modifications is discussed in section 8 – Key Issues. The assessment demonstrates that subject to recommended conditions of consent, the proposal as modified would not result in any unreasonable amenity impacts upon the neighbouring and surrounding properties with regards to privacy, visual bulk, view loss and overshadowing.

In view of the above, the proposed modifications are not considered to be inconsistent with or contradictory to the reasons given by the consent authority in granting the original approval, and the proposal is consistent with the provisions of section 4.55(3) of the EP&A Act.

## **8. Discussion of key issues**

### **Building Height**

- **Clause 4.3 (Height of Buildings) of RLEP 2012**
- **Clause (External Wall Height)**

It should be noted that since the original application, and in response to legal advice obtained by Council, the way in which the maximum building height is measured has changed. Based on the current method, where there is an existing building on site that is partially excavated, the “ground level (existing)” is taken to be the ground level below the floor slab allowing for a 200mm slab. As such, utilising the current measurement method, the original development would have resulted in a variation to the building height providing a maximum building height of 9.74m.

It is considered that the building height breach is primarily a result of the existing excavated Lower Ground Floor level and the level of the existing ground level beneath the floor slab. It is noted that if taken from the extrapolated natural ground levels, the height breach would be limited to a minor portion of the eastern side of the development.

It is also noted that the proposed building height of RL55.75 would be comparable with the two (2) adjoining properties as follows:

- 75 Denning Street – maximum height at front (west) = RL55.49 to gutter with pitched roof above, maximum height to rear (east) = RL55.77 to parapet.
- 79 Denning Street – maximum height of front (west) = RL57.39, maximum height to rear (east) = RL55.75.

As such, the proposal would not be inconsistent with the existing streetscape or the character of the locality. Due to the east-west orientation of the site, overshadowing to the neighbouring property to the south would be inevitable, however it is considered that the additional height of 700mm would have negligible impact upon the adjoining property, particularly noting the absence of windows on the northern elevation. The proposed increased height is not considered to result in any unreasonable impacts with regards to privacy, overshadowing, visual bulk or view loss, particularly noting that there is no change to the rear setback of the roof alignment and the development as approved obstructs the view corridors from the second floor level Bedroom of 79 Denning Street.

In view of the above, the proposal is found to be consistent with the objectives of clause 4.3 and the variation supported.

### **Clause 4.4 (Floor Space Ratio) of RLEP 2012**

The relevant objectives of clause 4.4 aim to ensure that the size and scale of development is compatible with the desired future character of the locality, that buildings are well articulated and respond to environmental and energy needs, and 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. As discussed previously, there shall be minor change to the external built form and as such the size and scale of the approved development shall be largely retained. Furthermore, there are no significant changes to the articulation of the approved facades, with the

introduction of additional window openings providing additional articulation. In this instance, the additional FSR can be directly attributed to the infill of the internal courtyard, minor extension to the west and the increased floor area at the Lower Ground Floor level, none of which have any impact upon overshadowing, bulk, privacy or views.

As such, despite the non-compliance the proposal is considered to be consistent with the objectives of the standard and is supported in this instance.

### **Pattern of Surrounding Development**

A submission was received from the adjoining property at 79 Denning Street which raised concerns regarding the proposed development and the development pattern of the immediate neighbourhood, with particular regards to how the proposal relates to the foreshore scenic protection area.

The submission notes that the pattern of development in the area demonstrates that each development has design attributes unique to the site with some design features existing because it is the best design solution for the site. Additionally, for those sites that are undeveloped, they must taken into consideration the existing built form that has been established and be mindful of the existing nature. Of particular concern is the Applicant's reference to other examples of top floor balconies at 79, 81 and 83 Denning Street and the circumstances of the approvals.

As outlined in the submission, Council also considers it appropriate to assess each application on its own merits as every site and development are different. Furthermore, the provisions of section 4.15 of the EP&A Act require Council to be flexible in the application of development controls where a development does not comply provided the proposal achieves the objectives of the control, and the application of clause 4.6 of RLEP 2012 allows for an appropriate degree of flexibility in applying certain development standards. As such, in addition to the assessment of the application pursuant to s4.55(2), the assessment of the application has also considered the relevant development standards and planning controls that are applicable.

A key concern in the submissions is the relocation of the living spaces to the First Floor level. It should be noted that there are no provisions contained within RLEP 2012 or RDCP 2013 which specify where living spaces should be located. The only relevant provision in relation to the location of living spaces is clause 2.5 of Part C1, RDCP 2013 which states that private open space should be situated at ground level and adjacent to the living or dining room of the dwelling. Given the location and nature of the subject site in which extensive water views are obtained, the original development approved the main living spaces of the dwelling at the Ground Floor level, with the main private open space located at the Lower Ground level, and a variation to clause 2.5 was supported. A secondary living space is provided off the rear private open space which is to be maintained in the modified proposal, and an additional area of POS was approved at the Ground Floor level in the form of a balcony to ensure consistent with the control. As such, the relocation of the living spaces to the upper floor level would not alter the relationship of the principal POS and living spaces. Given the extensive views that shall be obtained from the upper floor level, relocation of the living spaces is not unwarranted in this instance, and is not uncommon in foreshore scenic protection areas. Furthermore, clause 5.4 of Part C1 supports the relocation of the living spaces requiring that living and outdoors areas should be located adjacent to neighbouring living spaces to minimise noise impacts. In the absence of any specific control which prevents the living spaces being located at the upper levels, and in view of the context of the subject site and neighbouring properties, relocation of the living space to the upper level would not warrant refusal of the application.

### **Clause 6.7 (Foreshore Scenic Protection Area) of RLEP 2012**

The proposed modifications are predominantly internal alterations and a new balcony at the First Floor level. The proposal also results in an increase in height of 700mm, however it is not considered that the increased height would be discernible as viewed from the waterway or the foreshore areas. The overall approved built form is largely retained, with the additional floor space contained within



the approved building envelope, underground and minor encroachments to the front. The proposed First Floor balcony is partially recessed into the upper level and shall be constructed of light-weight/see-through materials, being glass, to minimise any visual bulk associated with the structure. As such it is considered that the visual impact of the development as viewed from the coastal foreshore will not be inconsistent with the original approval, and the proposal as modified remains consistent with the provisions of clause 6.7.

### **Clause 3.3 (Setbacks) of Part C1, RDCP 2013**

- **Subclause 3.3.1 (Front Setback ) of Part C1, RDCP 2013**

The proposed modifications involve extension of the First Floor level to the front of the site to the west, however an increased setback for the upper level shall be maintained and the proposed setback shall not be inconsistent with the streetscape or the setbacks of the adjoining properties.

- **Subclause 3.3.2 (Side Setbacks) of Part C1, RDCP 2013**

The proposed modifications involve amendments to the side setbacks as follows:

- Ground Floor Level
  - o Extension of the nil setback wall along the northern boundary;
- First Floor Level
  - o Decreased setback to the north from 1.8m to 1.52m;
  - o Decreased setback to the south from 2.05m to 1.8m.

The Ground Floor level external wall has been extended along the entire length of the adjoining garage which is located on the common boundary. The existing garage at 75 Denning Street has a height of RL51.77 (gutter at RL51.13). The wall extension shall have a height of RL51.70 and RL50.88 to the external drying area. As such the nil setback shall no be visually apparent from the adjoining property and shall not result in any adverse amenity impacts with regards to solar access, views or visual bulk.

Given the east to west orientation of the site, the relocation of the northern external wall at the First Floor level by 280mm shall not result in any adverse overshadowing impacts. Additionally, the relocation is not considered to result in any additional adverse visual bulk nor impact upon view corridors, and is supported.

The relocation of the southern external wall at the First Floor level provides a minimum 1.8m setback to ensure compliance with the numerical requirements of subclause 3.3.2 and is supported.

- **Subclause 3.3.3 (Rear Setbacks) of Part C1, RDCP 2013**

There is no change proposed the rear setback of the external walls of the approved development. Additionally, the rear balcony at the Ground Floor level has been amended on the plans in accordance with condition 2(b) of the development consent. However, the modification proposes a new balcony at the First Floor level to the rear.

The proposed balcony shall be setback between 13.75m-14.15m from the rear eastern boundary. However, it should be noted that the subject balcony is located on the approved roof of the Ground Floor level and therefore the only addition built structures shall be the balcony balustrade and planter box. The proposal effectively seeks to amend a portion of the approved roof to trafficable area by way of a new balcony.

Subclause 3.3.3 specifies a minimum numerical setback of 8m and the proposal complies with the numerical requirements. Notwithstanding, the provisions of subclause 3.3.3 stipulate that increased setbacks above and beyond the minimum 8m is required having regard to *“the need to achieve reasonable view sharing with the neighbouring dwellings and the public domain”*.

A detailed assessment of the view loss impacts has been undertaken and demonstrates that the proposed development as modified maintains a reasonable sharing of views, with particular

reference to the proposed balcony. As such, in this instance the proposed rear setback of the balcony is considered reasonable and is supported.

An aerial view of the subject site identifies that there is no predominant rear setback within this urban block, with the rear setbacks of the properties along the eastern side of Denning Street varied. Notwithstanding, the proposed rear setback of the balcony would be consistent with the adjoining properties to the north and south. It is also considered that the proposed balcony shall not result in any adverse overshadowing impacts. Additionally, the privacy impacts associated with the proposed balcony are not a result of the rear setback proposed, and therefore an increased setback is not considered warranted in this instance.

#### **Clause 5.1 (Solar Access) of Part C1, RDCP 2013**

Concerns have been raised in submissions regarding overshadowing as a result of the proposed modifications.

Due to the east-west orientation of the site, the resultant development would not impact upon solar access to the adjoining property to the north at 75 Denning Street.

The relevant changes to the built form in relation to overshadowing would be the increased height, the extension to the west, and the proposed balcony. The proposed fencing in association with the swimming pool would also impact upon solar access to the southern neighbour.

A search of Council's records revealed that the development at 79 Denning Street has minimal northern windows, with the northern windows to the living area forming part of a north-eastern corner window with expansive glazing to the east. Amended shadow diagrams were submitted with the amended plans demonstrating the additional overshadowing impacts as a result of the proposed modifications. The shadow diagrams demonstrate that additional overshadowing as a result of the proposed development shall be minimal, with the greatest impact to the rear yard as a result of the proposed swimming pool and boundary fencing, however as discussed further this component of the development is not supported. As such, the proposed development is not considered to result in any unreasonable impacts upon the adjoining properties with regards to solar access.

#### **Clause 5.3 (Visual Privacy) of Part C1, RDCP 2013**

Concerns have been raised regarding overlooking from the proposed development, with particular regards to the rear First Floor level balcony.

##### **Modification to windows**

###### *Ground Floor Level*

Windows have been provided to the bedrooms on the southern elevation as per the original consent. It is noted that the original condition required these to be highlight windows and it is recommended that these windows have privacy measures imposed to ensure no adverse privacy impacts. An additional window is provided on the northern elevation to the Laundry. The proposed window is not located adjacent to any neighbouring windows and given that this area is unlikely to be utilised for extended periods of time, no privacy measures are considered necessary.

###### *First Floor Level*

The proposed modifications include three (3) new windows to the northern elevation. The proposed windows are located within close proximity to and adjacent to neighbouring windows and as such it is recommended that privacy measures are imposed on these windows. The south-eastern window has changed from a Bathroom to the Dining room. The original approval imposed privacy screening on the window to mitigate overlooking impacts. It is recommended that this condition be retained, given that the subject window has a heightened use and increased glazed area.

##### **Proposed Balcony**

Concerns have been raised by both neighbouring properties to the north and south regarding overlooking from the proposed upper level balcony.

Given the location of the site and surrounding properties which experience water views to the north through to south-east, there is a clear absence of privacy screening on balconies and there is currently a mutual overlooking between properties in order to retain view corridors across the neighbouring sites. Clause 5.6 of Part C1 in relation to view sharing also requires that a balanced approach to privacy protection and view sharing is adopted, and screening which may obstruct views from neighbouring properties is to be avoided. In order to enable a reasonable sharing of views, the applicant has not proposed any privacy screening and as such the proposed balcony shall result in direct overlooking into the neighbouring properties to the north and south. However, in order to minimise overlooking impacts the proposed balcony has been reduced in size and recessed behind the rear alignment of the rear external wall. As such, the balcony is partially screened on the northern and southern edges for a length of 1.1m without having any additional impacts upon view corridors. As a result of the recessed balcony and maintenance of the external wall to the sides, sightlines from within the living and dining area shall also be partially obscured. The size of the balcony is not considered to be excessive, having a width of 2.7m. Furthermore, as a result of the recess, only a length of 1.6m of balcony area shall be visible adjacent to the adjoining properties. While the proposed balcony is located off the living area, the main outdoor recreation area for the dwelling shall be the rear yard at the Lower Ground Floor level which includes a large terrace area and an associated indoor living space. As such, the proposed balcony is a secondary area of POS, being an extension of the living space in order to take advantage of the views. Due to the size and width of the proposed balcony, numerous persons would not be able to be accommodated within the area. The original assessment noted that *"total visual privacy cannot be reasonably expected given the sites location within a foreshore scenic protection area, in particular where significant views can be enjoyed by the subject site and the adjoining neighbours as well as the sloping topography of the land which falls from west to east."* when assessing the privacy impacts from the rear balcony at Ground Floor level and the same principals can be applied to the proposed balcony. The proposed upper level is located in excess of 13.7m from the rear boundary and therefore sufficient spatial separation is provided to maintain a reasonable level of privacy to the adjoining properties to the rear. In view of the above, the proposed balcony is not considered to result in any unreasonable privacy impacts upon adjoining properties.

Subject to the above recommendations and in consideration of the context of the site being within a foreshore scenic protection area with expansive water views, it is considered that the proposed development shall not result in any unreasonable impacts upon adjoining and surrounding properties with regards to visual privacy.

#### **Clause 5.4 (Acoustic Privacy) of Part C1, RDCP 2013**

Concerns have been raised in submissions regarding adverse noise impacts as a result of the proposed development, with particular regards to the relocation of the living spaces to the First Floor level and noise from the proposed First Floor level balcony. The provisions of clause 5.4 require dwellings to be designed to limit the potential for excessive noise to sleeping areas of adjacent dwellings. In doing so it states that main living areas and recreation spaces must not be located adjacent to bedroom windows of adjoining properties, i.e. similar uses such as living spaces and POS of dwellings should be located opposite each other to minimise noise impacts upon bedrooms and the like. The eastern portion of the First Floor level of the proposed development is located adjacent to the living area of 79 Denning Street (and associated POS) and adjacent to the living area of the upper apartment of 75 Denning Street. It is noted that the bedroom areas of 79 Denning Street are located at the Ground Floor level and Second Floor level of the dwelling, with the bedrooms of 75 Denning located within the western portion of the building. As such, it is considered that relocation of the living space to the First Floor level would be compliant with the requirements of clause 5.4 and would minimise noise impacts from that which was originally approved, noting that the approved living area was located adjacent to the neighbouring bedrooms. The modified proposal also locates the POS adjoining the living spaces adjacent to each other further minimising noise impacts from the proposed development in accordance with the objectives of clause 5.4. In view of the above, the proposed modifications are not considered to result in any adverse acoustic privacy impacts upon adjoining properties.

#### **Clause 5.6 (View Loss) of Part C1, RDCP 2013**

Concerns have been raised from the adjoining property at 79 Denning Street regarding view loss from the proposed development, with particular regards to the new First Floor level balcony.

View sharing was a key consideration in the original application, with the approved development considering to achieve view sharing in accordance with the control. In assessing the view loss impacts, clause 5.6 notes that...

*“The concept of view sharing relates to the equitable distribution of views between development and neighbouring dwellings and the public domain. View sharing control aims to achieve a balance between facilitating quality development and preserving an equitable amount of views for the surrounding properties as far as is practicable and reasonable. View sharing does not prescribe the total retention of all significant views and vistas. In established inner metropolitan areas like Randwick City, development inevitably causes varying degree of view loss. The intent of the DCP is to ensure development is sensitively and skilfully designed, so that a reasonable level of views is retained for the surrounding areas.”*

In response to an initial assessment of the proposal, the Applicant was requested to erect height poles in order for an accurate view loss assessment to be undertaken. Height poles were erected at the subject site in January 2022. The height poles demonstrated the proposed balcony and height of the adjoining planter box to the south. A site visit was carried out to the neighbouring property at 79 Denning Street. The height poles demonstrated that the proposed balcony would impact upon view corridors from the living area of No. 79 and the adjoining balcony, with particular regards to the loss of views to Wedding Cake Island and the headland. As a result of the erection of the height poles, the proposal was further amended in order to reduce the view loss impacts. The amendments involve the following:

- An increased rear setback of 1.05m to align the outer edge of the balcony with the alignment of the levels below;
- An increased rear setback of 1.35m to the balcony balustrade;
- An increased southern setback to the balustrade by 1.35m;
- A reduction to the height of the planter box and parapet to RL52.50.

It is considered that the proposed amendments shall significantly improve the view loss impact from that which was originally proposed, however in order to determine whether a reasonable sharing of views is achieved, a detailed assessment of the view loss in accordance with clause 5.6 and the Tenacity principal is provided below.

#### Step 1: Views to be affected

The dwelling at 79 Denning Street enjoys expansive water views from north-north-east through to south-east. The affected view corridor is to the north-north-east and north-east and includes Wedding Cake Island, the headland of Trenerry Reserve and distant Clovelly headlands. Due to the location of the proposed development to the north, there shall be no view loss impact to the existing water and horizon views from north-east-east through to south-east from the dwelling at No. 79.

#### Step 2: Location from which the views are obtained

Several view corridors are obtained from throughout the dwelling at No. 79 given the multi-storey nature of the dwelling. The subject view corridor is from the open-plan living and dining area at the First Floor level within the eastern portion of the dwelling and the adjoining rear balcony. The view is obtained across the common side boundary of 77 and 79 Denning Street, and over the neighbouring properties to the north, north-east and east. The planning principal notes that views across side boundaries are more difficult to protect than views from front and rear boundaries, and that the expectation to retain side views is often unrealistic. Furthermore, it is worth noting that the subject view is somewhat vulnerable, in that the view is susceptible and vulnerable to future development of the subject and surrounding sites, and planting of future vegetation which could obstruct the existing view corridors.

#### Step 3: Extent of the impact

A site visit to the adjoining property at 79 Denning Street was undertaken on 21 January 2022. As outlined above, as a result of the erection of the height poles, the proposal was amended in order to minimise view loss impacts. When undertaking the site visit, the height poles were erected to the previous scheme. Figure 1 below identifies the erected height poles and the amended proposal. The proposed balcony as being assessed is highlighted in blue, with the planter box highlighted in

green, the approved rear building alignment in black outline, and the approved roof parapet in red outline.

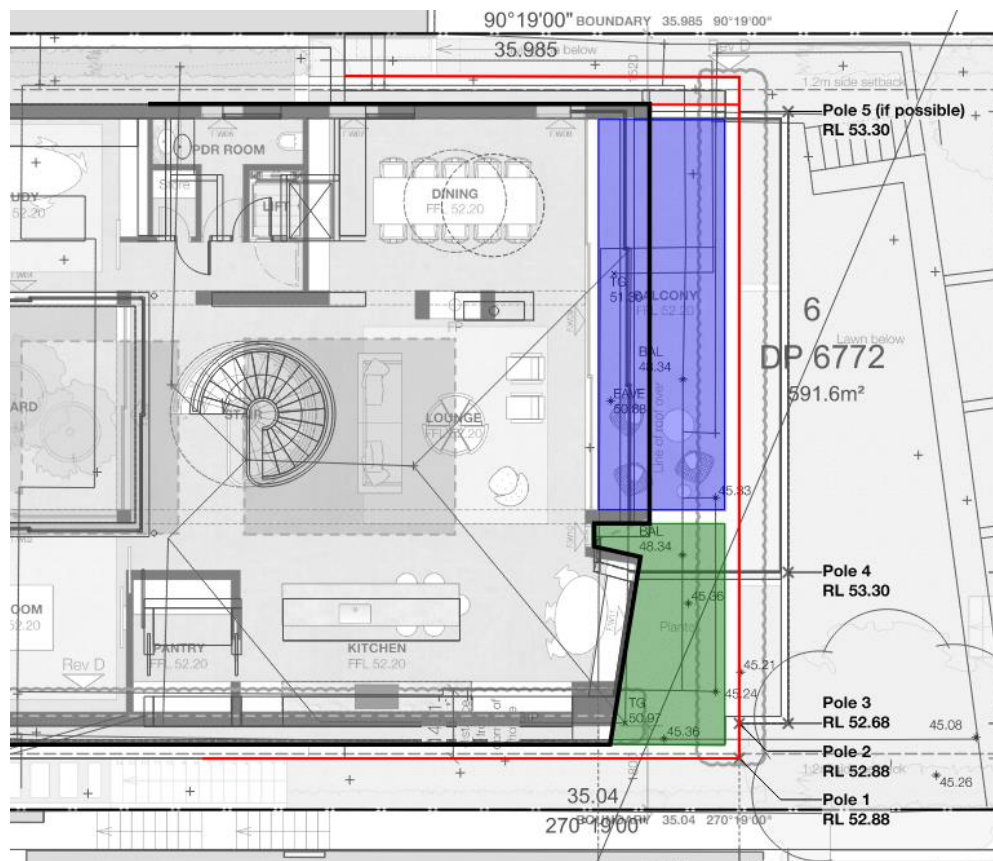


Figure 1 – Location of Height Poles

As identified above, the proposed parapet shall be in alignment with Poles 1 and 2, however the RL of the proposed parapet is RL52.50 and therefore the proposal shall be sited 380mm below the top of the height pole. Additionally, the balustrade of the balcony is sited further to the north and west of Pole 4 and to the west of Pole 5, and has a maximum height of RL53.2, 100mm lower than the erected height poles.

The site inspection revealed that the original modification would result in complete loss of views to the headlands and Wedding Cake Island from within the dwelling and from the POS, with the extent of view loss varying dependent on where you were located. Based on the photographs from the site visit, it is estimated that the proposal as amended, shall retain views of Wedding Cake Island and the end of the headland from the rear balcony and from the most eastern area within the living room. However, it is estimated that the proposed balcony and planter shall impact upon the headland views from further within the dwelling at the centre of the living/dining area. The extent of the view loss shall vary depending on where within the room you are sited.

The existing view corridors and height poles can be seen in Figures 2-7 below:

D46/22



D46/22



Figure 2 – View from the eastern side of the First Floor balcony



Figure 3 – View from the western side of the First Floor balcony



Figure 4 – View from the eastern side of the Dining area



Figure 5 – View from the eastern side of the Dining area



D46/22



Figure 6 – View from the centre of the Living/Dining area (headland view likely to be highly impacted by balustrade)



Figure 7 – View from the Living/Dining area north-eastern corner window (headland view likely to be impacted by balustrade).



In accordance with the Tenacity principal, in determining the extent of the impact consideration should be given to the views from the whole property. As outlined above, significant water and horizon views to the north-east through to south-east will be unimpacted by the proposal. However, it is also acknowledged that the most significant views are to Wedding Cake Island and the headlands. In view of the above, the view loss impact would best be described as moderate.

#### Step 4: Reasonableness of the proposal

It is considered that views to Wedding Cake Island and the end of the headland would be retained from several vantage points from within the eastern side of the First Floor level and from the balcony, however it is acknowledged that the headland view would most likely be lost from further within the dwelling. While there are minor non-compliances with building height, external wall height and FSR these non-compliances are not considered to impact upon the resultant view loss and it is considered that the view loss can be solely attributed to the rear setback. As discussed previously within the report the rear setbacks of the dwellings within the eastern side of the street do vary and therefore there is not a definitive or established setback that applies to the existing properties, however it is acknowledged that the existing dwellings are all setback in excess of the numerical minimum requirement of 8m. The proposed rear setback extends approximately 250mm beyond the rear external wall of No. 75, however is sited 100mm behind the eave. The proposed rear setback is also approximately 800mm behind the rear alignment of the balcony at 79 Denning Street. As such, the proposal does not extend beyond the alignment of the adjoining properties.

Given the nature of the location of the subject site, relocation of the living spaces to the upper level is not considered unreasonable, particularly given that there are other examples of living areas on upper levels within the vicinity. The provisions of RDCP 2013 aim to ensure POS is located adjoining living areas to provide a reasonable level of amenity to the living spaces. As such, the provision of a balcony off the living space is not considered to be unreasonable or unwarranted. The applicant has reduced the size of the balcony and recessed the balcony behind the approved external wall alignment in order to minimise the associated impacts, the proposed balcony is 2.7m in width and is not considered to be excessive, noting that a minimum setback of 2.4m is generally required. Furthermore, the proposed balustrade is to be constructed of glass to allow views through the structure. In order to fully retain the view corridors, the balcony would need to be deleted in its entirety. Given the consistency with the adjoining setbacks, and the reduced width of the balcony, it is considered that there is not a more skillful design in this instance that would afford the same amenity.

While the alignment of the roof (and subsequently the planter box and eastern edge of the balcony) is retained, the parapet height shall be increased by approximately 350mm. It is considered that the increased height would still allow views to Wedding Cake Island to be retained over the top of the parapet, however to remove any uncertainty it is recommended that that parapet be reduced by 100mm, providing a 200mm perimeter parapet. In response to the view impacts that any planting within the planter would have, it is also recommended that no planting is provided within the planter box, with a pebble roof provided similar to that of No. 79.

#### **Conclusion**

The planning principal notes that view sharing may be a situation where some of the view is taken away for the enjoyment of the proposed development, with some of the view retained. Additionally, clause 5.6 of RDCP 2013 acknowledges that view sharing is not the total retention of all significant views and aims to achieve a balance between development and equitable views. The subject view corridor is also fully across a side boundary which is harder to retain. While it is recognised that the proposed development shall result in view loss from the adjoining property, it is considered that view sharing will be achieved, noting that Wedding Cake Island and headland views shall be retained from portions of the dwelling, and the eastern water views will be wholly retained. As such, the proposed development is considered to be consistent with the objectives of Clause 5.6 and is supported in this instance.

#### **Proposed Swimming Pool and Decking**

The original approval imposed a condition of consent for the deletion of the swimming pool and associated deck, fencing and retaining walls. The deletion of the pool was in response to concerns regarding the elevated nature of the pool area and the associated impacts upon the neighbouring

properties in terms of privacy, visual bulk and overshadowing, and the need to retain the existing Banksia tree within the north-eastern corner of the site. The Applicant seeks to reinstate the proposed pool in the subject modification application.

The proposed pool and deck have been lowered to address the original concerns, and a lowered terraced planter provided to the east to further minimise impacts. However, the elevations indicate that the boundary fencing shall be sited 1.8m above the pool deck level, resulting in a fence height of 2.55m-3.83m as viewed from the property at 75 Denning Street, and 2.41m-2.51m as viewed from 79 Denning Street. The proposed fencing associated with the pool as well as the elevated levels shall still result in adverse impacts with regards to visual amenity, privacy and overshadowing, and therefore the original concerns have not been fully addressed. It is considered that there are alternative design options that would allow a pool to be installed without the need for higher boundary fencing, by reducing the size of the pool area and providing a greater setback to the side boundaries, which could possibly be conditioned by consent. However, notwithstanding the above, retention of the existing Banksia serrata tree has not been addressed in the documentation provided with the modification application, including whether the tree could be safely retained with the proposed pool. Council's Landscape Officer advised that the tree is in good health and condition, and is an endemic species to the LGA which is protected by RDCP 2013. Furthermore, the existing tree provides screening to the adjoining properties to the rear in terms of privacy and softening the built form. As such, removal of the tree is not supported without adequate justification. Council's Landscape Officer in the original conditions of consent specified a minimum distance of 3m for any works or excavation to the tree, and it is noted that the proposed pool is located within the 3m setback. In the absence of sufficient information which demonstrates the tree could be retained in the form of an Arborist report, the proposed pool is not supported in this instance. As such, it is recommended that condition 2(c) of the development consent be retained.

#### **Use of the Lower Ground Floor Level**

Concerns have been raised in submissions regarding the use of the Lower Ground Floor level as a secondary dwelling. A condition of consent is recommended for no cooking facilities to be provided within the kitchenette area and for the use of the Lower floor level to be only in conjunction with the principal dwelling and not for separate habitation.

### **9. Conclusion**

That the application for modification to the approved development pursuant to section 4.55(2) of the EP&A Act be approved (subject to conditions) for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Development Engineer

*The lowering of the garage will steepen the internal driveway between the front property alignment and the proposed garage.*

*If adopting the original alignment levels as you provided;*

- *The internal driveway will steepen from 5.3% to 12.7% along the northern edge*
- *The internal driveway will steepen from 4% to 8.8% along the southern edge*

*Although it is always preferable to have flatter grades, these adjustments are still within acceptable limits when considering things like scraping & without the need for transitions.*

---

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

**File Reference:** DA/901/2015/A

D46/22



## Development Application Report No. D47/22

**Subject:** 22 Mears Avenue, Randwick (DA/558/2021)

---


### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing semi-detached dwelling, including internal works and addition of a first floor with rear-facing balcony, and associated works.
<b>Ward:</b>	East Ward
<b>Applicant:</b>	Mrs C Burgess
<b>Owner:</b>	Mr R K Burgess & Mrs C Burgess
<b>Cost of works:</b>	\$308,000
<b>Reason for referral:</b>	10 or more unique submissions by way of objection were received

### Recommendation

- A. 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/558/2021 for alterations and additions to existing semi-detached dwelling, including internal works and addition of a first floor with rear-facing balcony, and associated works at No. 22 Mears Avenue, Randwick, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/558/2021 - 22 Mears Avenue, RANDWICK NSW 2031

D47/22

D47/22



## 1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as 10 or more unique submissions by way of objection were received.

The proposal seeks development consent for alterations and additions to existing semi-detached dwelling, including internal works and addition of a first floor with rear-facing balcony, and associated works.

The key issues associated with the proposal relate to heritage impacts and privacy impacts. The site is located in High Cross Heritage Conservation Area, adjacent to heritage items. Neighbour submissions have raised specific concerns relating to heritage impacts and overlooking.

The proposal is recommended for approval subject to the following considerations:

- The proposed rear balustrade of the balcony must be setback 7.392m from the rear boundary. This results in a 950mm reduction of the proposed balcony depth to 1m. The proposed privacy screens shall remain with a 6.442m rear setback. The proposed privacy screens will therefore extend 950mm past the rear balustrade of the balcony.
- The upper semi-opened portion of the rear balustrade of the rear first floor balcony shall be constructed of obscured glazing to minimise potential overlooking impact to the neighbouring properties.
- The proposed ground floor rear deck must be deleted and the existing stairs shall be retained.
- Submission of a photographic archival recording of the property for heritage purposes.



## 2. Site Description and Locality

The subject site is known as 22 Mears Avenue, Randwick and is legally described as Lot 1 in DP 619345. The site is 140.3m<sup>2</sup>, is regular in shape and has a 6.37m frontage to Mears Avenue to the south. The site has an allotment depth of 21.995m along the northern side boundary. The land falls approximately 0.7m from the Mears Avenue boundary to the rear boundary. The site is zoned R3 – Medium Density Residential under Randwick LEP 2012.

The site contains a single storey semi-detached dwelling constructed to the eastern side boundary. There is no vehicular access to the site.

The site forms a pair with the east-adjoining single storey semi-detached dwelling at 24 Mears Avenue. The site is adjoined to the west by a two storey attached dwelling at 20 Mears Avenue.

The site is located in residential area within High Cross Heritage Conservation Area.



**Figure 1.** Streetscape view – 22 Mears Avenue, Randwick

D47/22

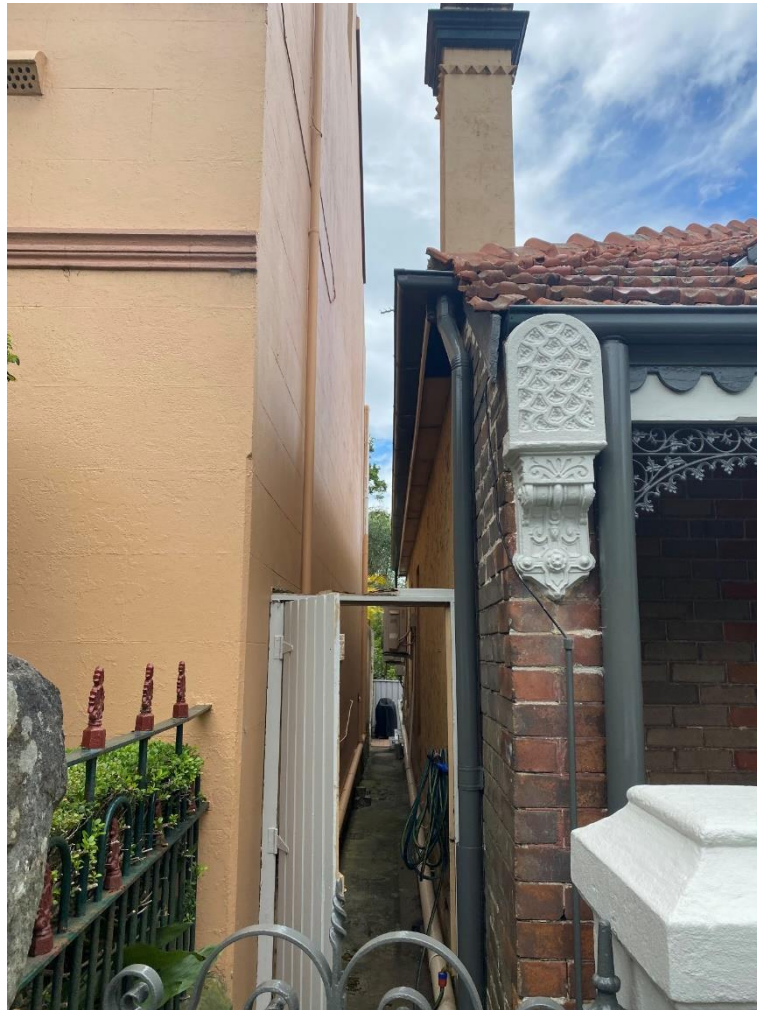


**Figure 2.** Streetscape view – 22 Mears Avenue, Randwick



**Figure 3.** Streetscape view – Development to the east of the subject site





**Figure 4.** Interface between 20 Mears Ave (left) and 22 Mears Ave (right)

D47/22



**Figure 5.** Existing western side setback of 22 Mears, looking south. 20 Mears located to the right.



**Figure 6.** Existing private open space of 22 Mears Ave, looking west towards 20 Mears Ave.





**Figure 7.** Looking north-west from existing private open space of 22 Mears Ave towards 10A Mears Ave.



**Figure 8.** Looking east from existing private open space of 22 Mears Ave towards 24 Mears Ave.

D47/22



**Figure 9.** Looking north east from existing private open space of 22 Mears Ave towards 4 Ada Street.

### 3. Relevant history

The site has been used for residential purposes for an extended period of time. A search of Council's records revealed the following relevant application history:

- CDC/167/2015 – Complying Development Certificate No. CDC/167/2015 was approved on 14 July 2015 for internal alterations and rear external door to an existing dwelling.
- DA/368/1994 – Development Application No. DA/368/1994 was approved on 30 September 1994 for alterations and additions to the existing dwelling.

#### Additional information received 25 October 2021

A request for information was sent by Council on 12 October 2021, requesting a revised Statement of Environmental Effects and additional dimensional and level details on the proposed plans. The additional information was received on 25 October 2021.

#### Additional information received 14 June 2022

Council's Heritage Consultant raised concerns about the proposed setback and bulk of the proposed first floor addition in March 2022. Consultation, including a site meeting, between the Heritage Consultant and the Applicant/Architect were held between March 2022 to June 2022 to refine design amendments.

Amended plans were received by Council on 14 June 2022. It should be noted that a new architect was appointed by the Applicant to prepare the amended plans. The amendments under this set of plans included:

- Amended plans for roof lowered by 200mm
- First floor finished floor level increased by 150mm
- New 1.8m rear boundary fence
- Modification to proposed rear deck
- Modification of internal configuration

#### 4. Proposal

The proposal seeks development consent for alterations and additions to the existing semi-detached dwelling, including:

- Ground floor alterations
  - Conversion of existing bedroom to study and bathroom
  - Reconfiguration of kitchen and laundry layout
  - Addition of stairs to upper level
- First floor addition
  - Master bedroom
  - Ensuite
  - Rear balcony
  - Storage area within roof cavity
- External works
  - Addition of deck at FFL 55.60
  - Replacement of rear and eastern side boundary fence

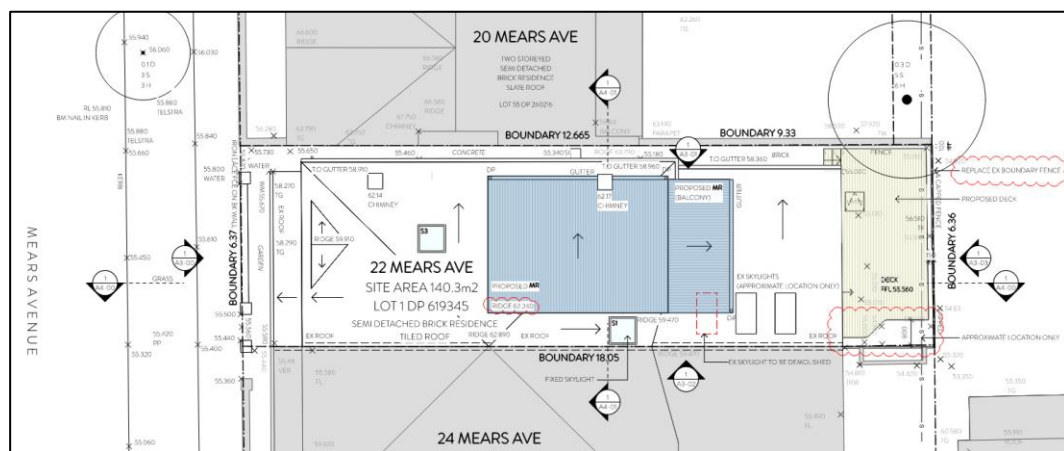


Figure 10. Proposed site plan - 22 Mears Avenue

#### 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:

Issue	Comment
<b>Inadequate information</b> <b>20 Mears Avenue</b> <p>I have studied the application and its annexures and am very concerned that information contained therein, especially diagrammatic information, is incomplete and/or confusing and the written commentary so bereft of fullness and accuracy as to incline me strongly to the view that information has been suppressed and/or distorted so as to convey the impression that the works sought to be done are minimal both as to scale and impact as well as utility; whereas, in my submission, they are not. The applicant maintains that the application is governed by the Council's R2 Planning Code. Council maps</p>	<p>Additional information including an amended Statement of Environmental Effects and amended plans, with additional dimensions and levels, were submitted to Council on 25 October 2021.</p> <p>A new architect was appointed by the Applicant for the amended plans received on 14 June 2022.</p> <p>This architect reviewed the application documents and corrected drafting errors, including the proposed first floor finished floor level (FFL).</p>



D47/22

Issue	Comment
<p>show it as R3 and so a different regime applies. I also note that the aerial image attached to the application (see SEE 3.0) is alleged to be "41 Blenheim Street", whereas the photograph on the following page certainly appears to be 20 — 24 Mears Avenue. I mention this because it is indicative of the general lack of quality in the application.</p> <p><u>10 Mears Avenue</u></p> <p>On reading the application documents, we see numerous ambiguous, sloppy and potentially misleading statements.</p> <p>Heritage standards – The works proposed show little appreciation of the standards maintained by neighbours. Information is woolly and imprecise.</p> <p>Practical Implementation – There are many statements that reduce confidence in the quality and utility of the proposed work, and in the intent of the proposal.</p>	<p>As stated above, additional information including amended plans with additional dimensions and levels, were submitted to Council on 25 October 2021. A new architect was appointed by the Applicant for the amended plans received on 14 June 2022. This architect reviewed the application documents and corrected drafting errors, including the proposed first floor finished floor level (FFL).</p>
<p><b>Infill development</b></p> <p><u>20 Mears Avenue</u></p> <p>The applicant refers to the subject property as "infill development" in 3.0 of the Statement of Environmental Effects (SEE)...</p> <p>In terms of Council's General Controls in the DCP 1.10 "infill" refers to a new building — which this proposal certainly isn't and implies, by being new, a greater liberality in the proposed development plans. This should not be seen as a reason for lessening of standards as regards heritage.</p>	<p>The Statement refers to the proposed additions as "infill development". Pursuant to Clause 5.10 of RLEP 2012, consideration must be given to the impact that any development may have upon the heritage conservation area and nearby heritage items. The proposal has been reviewed by Council's Heritage Consultant, who is satisfied with the amended plans received on 14 June 2022.</p>
<p><b>Heritage impacts</b></p> <p><u>20 Mears Avenue</u></p> <p>The alterations and additions proposed are not "minor" as stated in clause 5.10 of the SEE. They are very significant in terms of adverse effect to the heritage of the street and in particular the two rows of outstanding terraces, as the proposed design is not period informed. In relation to the commentary in 5.10, it is very garbled. Previous alterations were made in the last approximately five years and presumably approved by Council. They related solely to replacement of the pre-existing corrugated iron roof and internal redecoration.</p> <p>The applicant's Heritage Statement makes absolutely no reference to the effect on adjacent Western side properties, number 20 in particular but the terrace in general. The terraces have the most significant heritage value, as evidenced by Council's restrictions on</p>	<p>The application has been considered by the Council's Heritage Consultant, City Plan. The Heritage Consultant raised concerns about the proposed setback and bulk of the proposed first floor addition in March 2022. Consultation, including a site meeting, between the Heritage Consultant and the Applicant/Architect were held between March 2022 to June 2022 to refine design amendments. Amended plans were received by Council on 14 June 2022.</p> <p>The proposed design amendments to satisfy the heritage considerations include lowering the roof by 200mm and modifying the roof pitch.</p> <p>Council's Heritage Consultant concludes that the revised proposal will be compatible with the symmetrical presentation of the roof form of the pair of cottages within Mears Avenue, and the</p>



Issue	Comment
<p>development there and these should be included. And protected in preference to the proposed development.</p> <p>I dispute absolutely the conclusions drawn by the applicant in his SEE 3.1 "Character". The additions and alterations proposed are substantial, not historically informed as to style — in fact, they have very little style at all, and are NOT out of the sight lines from the street.</p> <p>The most easily visible part of this proposal is the "reverse dormer". It is completely utilitarian in style, functional without any decorative aspect; not harmonious with the rest of the street and (contra the applicant's statement) IS visible from the front, rear and side. These are blank walls which will attract even further attention because of the (non-historical) colour scheme chosen.</p> <p>The development will be seen from the front and sides as well as the back.</p>	<p>High Cross Heritage Conservation Area generally.</p> <p>No objections were raised by the Heritage Consultant in regard to the impact of the development on nearby Heritage Items.</p>
<p><u>14 Mears Avenue</u></p> <p>This DA is in a Heritage Conservation Area.</p>	<p>Noted, refer to comments provided by Heritage Consultant.</p>
<p><u>10 Mears Avenue</u></p> <p>While we live 5 houses away, we are very concerned that if this precedent is allowed now, it could be of great adverse impact in future.</p> <p>The new additions are not in character with the street, lower the general standards and will impact both the aesthetics and the values of properties</p> <p>The adverse impact is completely unnecessary, and much could be avoided now with consultation and common sense now - to avoid serious conflict in future.</p>	<p>The proposed works have been reviewed and re-assessed on several occasions, working with the applicant. The initial design has been amended (as stated above) at the request of Council and the Heritage Consultants findings.</p> <p>Council has since considered the proposal against the relevant legislative controls and has deemed the proposal to be acceptable.</p>
<p><u>2/5 Mears Avenue</u></p> <p>I am objective to the negative visual and over development of properties in Mears Avenue. This is a Heritage conservation street. Please don't spoil it.</p>	<p>Since the original submission of the design to the current plans submitted for assessment, the design is considered sensitive and in keeping with Mears Avenue.</p>
<p><u>12 Mears Avenue</u></p> <p>As you are well aware this is a heritage area so I assume a Heritage Consultant will be involved in assessing the feasibility and impacts this proposed renovation will have in maintaining not only consistency but the beauty of the area by not allowing a precedent such as this renovation as it is to invade the privacy of so many others.</p>	<p>The proposed development, including the latest amended plans have been reviewed by a consultant heritage consultant who has considered the works as acceptable. Refer to report below, for comprehensive heritage assessment.</p>
<p><u>Address not provided</u></p>	

D47/22

Issue	Comment
<p>I would like to raise the important issue of the significance of the 'heritage' aspect of the area. I rent a heritage building for my business and I know there are a lot of homes in Meares Ave which date back to the 1800s and to have any sort of impact on these would be detrimental for the area. It is for this reason I would object to the proposed development which adversely impacts the adjoining neighbour (by way of sunlight and privacy - among other things) and also the adverse impact on the significant heritage of the neighbourhood. Any development that is undertaken in the area must keep in mind the significance of the heritage of the area. I understand that progress must occur, but we must be mindful of what came before and will come after. The heritage of our buildings must be protected in future developments and any development must strictly adhere to Council Controls. We must maintain our heritage and respect what came before. Guidelines and regulations are in place to protect all stakeholders.</p> <p><u>9-9 Mears Avenue</u></p> <p>You do not appear to have given due credence to the heritage status of Mears Avenue. We unfortunately did not know our way around objecting to DA's and now find ourselves with an unacceptable development on the west side of our property at 7 Mears Avenue. As such we support 20 Mears Ave in their objection to the DA for 22 Mears. The council is putting the heritage of Mears Avenue under immense pressure. The change to the parking arrangements completed Easter 2017 that allowed 90 degrees parking on the South side of Mears has increased traffic movement exponentially. This along with undesired developments to existing structures is destroying the amenity of residents in Mears. Council MUST give due recognition to heritage concerns in all aspects of developments and changes in Mears both residential and council induced actions.</p>	<p>The original design has been amended subject to the findings of Councils Planner and the Consultant Heritage Planner. The amended plans have been reviewed and assessed, considered to be acceptable in this instance.</p> <p>The proposed development has been considered not only against the relevant planning controls and in addition the specific heritage value and concerns of the item and the streetscape, deemed to be acceptable.</p>
<p><b>Balcony / Privacy</b></p> <p><u>20 Mears Avenue</u></p> <p>Specifically I object to the proposed balcony which has a very direct negative impact on our privacy. A substantial improvement would come from removing the proposed balcony area from its protruding position back into the main section of the house and pushing the new bedroom to include at least part of the circle storage area.</p>	<p>The proposed balcony is oriented to the rear of the site and privacy screens are proposed to either side to mitigate overlooking. The balcony is only accessible from the master bedroom, which restricts privacy impact – i.e. the adjacent bedroom use discourages use of balcony for entertaining purposes.</p> <p>It should be noted that there is an extent of mutual cross viewing in the immediate area.</p>

Issue	Comment
<p>Does the proposed privacy screen wrap around to the northern edge of the balcony so our backyard is not overlooked? Our pool is solar heated so we can use it in both Winter and Summer and we need privacy. I note that the controls detailed in the DCP section C1 parts 5.3 and 5.4 are specific on measures that protect the enjoyment of the occupants of adjoining properties.</p> <p>While the applicant says the proposed balcony "is not for entertaining purposes" by the current owner, that cannot be enforced or said for future owners.</p> <p>Even if the proposed balcony in the development is allowed at the existing rear setback line it will need to have a non-transparent privacy screen totally around it, to address our privacy concerns because it overlooks our back yard significantly.</p> <p><u>14 Mears Avenue</u></p> <p>The proposed additional first floor rear-facing balcony would be unsightly and subsequently overlook both adjoining properties at 20 and 24 Mears Avenue, resulting significantly reduced privacy.</p> <p>There is a privacy issue with this DA as the proposed development looks directly into 20 Mears Avenue, the residence next door. I am personally familiar with this backyard and have viewed the proposed application and it is very apparent there is a privacy issue being that 22 Mears Avenue has direct viewing access to 20 Mears Avenue backyard. The properties from 2 to 20 Mears Avenue are heritage listed as you would know and once you agree to this DA that will set a precedent for anyone to be denied privacy in their own backyards. Terraces from 2 to 20 Mears Avenue have been long term rate payers - at least half of the residents in these heritage listed terraces have lived here 30 plus years - I myself have lived at 14 Mears Avenue for 22 years.</p> <p><u>4/4 Ada Street</u></p> <p>The south-west boundary of my property is along the back of this property, 22 Mears Ave. This fence line is adjacent to the backyard of 4 Ada Street. The proposed balcony would look over our area and all privacy would be lost.</p> <p><u>4 Mears Avenue</u></p>	<p>Balcony development is characteristic for residential buildings in the surrounding area. A proposed balcony addition is considered reasonable in this context.</p> <p>The Explanation in Clause 5.3 Visual Privacy in Part C1 of the DCP elaborates: <i>In the urban context, complete privacy between dwellings is often not achievable or practicable, and some limited glimpses between neighbours can add to safety and social well being. The emphasis of the control is on minimising cross viewing and overlooking from the indoor and outdoor living areas of dwellings to maintain the amenity of the neighbours.</i></p> <p>To reiterate, the emphasis is on minimising overlooking from indoor and outdoor living areas – the proposed balcony is not considered an outdoor living area unlike the ground floor deck which is directly accessed from the indoor living areas. The associated bedroom use of the balcony is considered a passive use, which minimises privacy impact.</p> <p>Nonetheless, amendments to the proposed balcony can mitigate overlooking into neighbouring properties. Hence, a condition of consent shall be imposed to increase the rear setback of the proposed rear balustrade of the balcony by 950mm. This results in a balcony depth of 1m. The proposed privacy screens shall remain with a 6.442m rear setback. The proposed privacy screens will therefore extend 950mm past the rear balustrade of the balcony, minimising overlooking into 20 Mears and 24 Mears Avenue. The increased rear setback of the balcony will also assist in mitigate direct views into the common open space of 4 Ada Street.</p>

D47/22

Issue	Comment
<p>My concerns relate primarily to the impact on the privacy of my neighbours' property at Number 20, the last in a long row of heritage-listed grand terraces. Much of the charm and liveability of these old homes, built in 1886, is their secluded walled courtyards at the rear. Allowing a second-story addition to be built that looks directly over Number 20's garden not only severely compromises the residents' privacy, it also impacts the intent of the property's very special original design, a design deemed to be of heritage significance and worthy of preservation.</p> <p>Approval of such a privacy breach would set a development precedent that would potentially be highly detrimental to the historic integrity of Brighton Terraces.</p> <p><u>10 Mears Avenue</u></p> <p>The proposed 1st floor rear balcony is a gross invasion of privacy. A privacy screen is not the answer. The balcony overlooking the back garden of No 20 would destroy their privacy and quality of life, developed over 40 years. Perhaps a solution could be solved if the storeroom, which looks like an illegal bedroom, is not allowed. The development could then be contracted/pushed back into the house, without overlooking No 20 back yard at close range.</p> <p><u>12 Mears Avenue</u></p> <p>It is my understanding that there is to be an added story to this Federation semi which includes two rooms and a balcony that will totally invade the privacy of not only the rear garden and pool of No 20 Mears Avenue, the garden of No 24 Mears Avenue but also impact the privacy of the properties that 22 Mears Avenue adjoins in Ada Street namely No 2 and No 4 (a total of 8 rental units)</p>	
<p><b>Rear setback</b></p> <p><u>20 Mears Avenue</u></p> <p><u>16 Mears Avenue</u></p> <p><u>10 Mears Avenue</u></p> <p><u>12 Mears Avenue</u></p> <p>The development should not be allowed to be built beyond the predominant rear setback of the block as determined by the Heritage terraces -Randwick Comprehensive Development Control Plan 2013 Rear Setbacks 3.3.3 ii)</p>	<p>As per Clause 3.3.3, Part C1 of the DCP, the minimum setback requirement is 5.5m. The proposed first floor addition (including balcony) has a rear setback of 6.442m.</p> <p>The neighbour submissions reference the predominant rear setback alignment of the row of terraces in 2-20 Mears Avenue. It should be noted that this row of terraces are of a different building typology to the subject site, which is currently a single storey semi-detached dwelling.</p> <p>Figure 10 shows the rear setback alignment of the terraces at 12-20 Mears Avenue. This rear</p>

Issue	Comment
	<p>setback alignment is based on the two storey built form of the terraces. The terraces comprise a two storey rear wing, as well as single storey elements adjacent to the rear boundary. Refer to the photo in <b>Error! Reference source not found.</b> as an example.</p> <p>Figure 11 shows that the proposed first floor addition does not extend past the predominant rear setback alignment.</p> <p>It should also be noted that heritage considerations means that the proposed first floor addition cannot be shifted towards Mears Avenue to increase the rear setback. The proposed addition is considered reasonable, containing a bedroom, ensuite and balcony. The roof cavity, containing storage, is considered unsuitable for habitable use due to poor amenity and insufficient floor to ceiling heights.</p> <p>The proposed rear setback is therefore considered satisfactory.</p>
<p><b>Stormwater</b>  <b>20 Mears</b></p> <p>This objection relates to clause 5.4 Stormwater Management in the SEE. I do not believe the application complies. The proposal to seemingly attach a pipe to the side of the house such that the stormwater runs presumably by gravity into the street gutter seems to me to be impossible to achieve. The height necessary to do this would mean that it would cross the property from quite high up on the northern side and might even be visible (i.e. above ground) after it exits the side of the house and into the footpath (assuming Council is prepared to allow this). In any normal sense with the subject property's floor level being BELOW the level of the footpath and beyond, the proposal is just unworkable and, as well as aesthetic considerations, if achieved is likely to affect damp on the two semi detached cottages as well as number 20.</p> <p>Furthermore the development proposes increased width on the gutter line above the ground level such that it is far too close to my property. Drainage to the front is going to be extremely difficult. See also Applicant's plans.</p> <p>The plans also involve new storm water drainage arrangements and, as noted above, I don't believe they work for the rear courtyard and deck. I think the only way the proposal for the new and increased drainage can be coped</p>	<p>Conditions of consent are included to manage stormwater impacts.</p>

D47/22

Issue	Comment
<p>with is by a reverse pump and this involves additional noise (if placed externally) which I object to on the grounds of noise.</p> <p>I very much doubt that the existing drainage is sufficient or appropriate. I think there is a large outflow from number 22 in a northern direction which waters or otherwise impacts the neighbouring property in Ada Street. Otherwise I strongly suspect that drainage is affected by draining into the sewage line. This of course is illegal. I further submit that the applicant's plans at the rear which involve raising the height by three steps and having a deck throughout the rear open part of the property is going to involve further use of the sewage line. This can be inferred from the document DA01.</p> <p><u>4/4 Ada Street</u></p> <p>There is a water ingress problem with the drainage onto this area from ground water coming from properties in Mears Avenue. Any extra water from 22 Mears Ave would be to our disadvantage.</p>	
<p><b>Additional Design Provisions for Semi-Detached Dwellings</b></p> <p><u>20 Mears</u></p> <p>In their determination of this Development Application we expect that Council's Officers will consider the Objectives and Controls of the section of the DCP that relates to Additional Design Provisions for Semi-Detached Dwellings (C1 section 4.2).</p>	<p>Consideration has been made against this part of the DCP. Refer to Appendix 2 for DCP compliance table.</p>
<p><b>Storage windows</b></p> <p><u>20 Mears</u></p> <p>From the "elevations" section of the application, there appears to be a window inserted on the new western side of the dormer. I can't see this anywhere else in the plans and am confused. This small window would be in the area proposed as "storage space". Storage space does not need a window; however, the size of the "storage area" strongly leads me to believe that this space, otherwise unacceptable as such, will be used as a bedroom. Please refer to DA02, "Low Part Roof" which appears to show a small window within the supposed storage area as well as a "roof light" which would not be necessary in a true storage area and is further confirmation of an intention to use this large area as a bedroom. There is also a window shown in the upper ensuite.</p> <p>If approved are these windows to be fireproof? When we did our up- stairs development we</p>	<p>The proposal includes a west-facing ensuite window, as well as a skylight to the storage space in the roof cavity. The roof cavity is not suitable for habitable use due to insufficient floor-to-ceiling heights and poor amenity.</p> <p>Compliance with the Building Code of Australia/National Construction Code is required, and included as a condition of consent.</p>



Issue	Comment
<p>were required to put in a fireproof window and have it certified, to ensure that any fire from our house did not spread to no 22.</p>	
<p><b>Deck</b>  <u>20 Mears</u>  The proposed deck goes from the property boundaries of number 22 from West to East and I believe this is contrary to Council's requirements in that going boundary to boundary is not permitted. The raised height has a significant adverse effect on number 24 and is only saved from having the same effect on my property because of the height of the existing boundary wall. The dormer and related works involve a further intrusion onto the space between my property and the subject property. It is already very narrow and very likely to create further problems with waterflow.</p>	<p>The deck is located a minimum 100mm from the side boundaries and 150mm from the rear boundary. The deck is elevated 0.57m above existing ground level. Due to its use as the primary outdoor living area, elevated nature and minimal setbacks, the deck will have an immediate privacy impact on the 4 Ada Street and 24 Mears Street.</p> <p>However, the BCA/NCC requires a fire rated wall to be provided to decks located less than 900mm from a boundary. The fire rated wall must extend from the footings, or ground slab, to the underside of a non-combustible roof covering or eaves lining. A fire rated wall would have an adverse bulk and shadow impact on the subject site and neighbouring properties.</p> <p>Therefore a condition of consent shall be imposed to require the deletion of the ground level deck.</p>
<p><b>Shadow diagrams</b>  <u>20 Mears</u>  The shadow diagrams appear to me to be inadequate in that the direct effects on number 20 are not visible. My understanding is that I ought to be able to see the effect on my property from the diagrams themselves and I should not be put to the expense of having to employ my own consultants to make these calculations. The fact that they are missing, in my opinion, leads to the conclusion that this is deliberate and an attempt to obfuscate what the applicant wants. The shadow diagrams only relate to the front of the property. The greatest shadow potential effect is to the rear, both to my property and number 24. I submit that these need to be included and I further request that shadow diagrams for the summer solstice also be mandated. I note that Council's guidelines for DA's require that the shadow diagrams include effects on adjacent land. This is even more pressing because the survey does not show that the greater part of my backyard is taken up by a pool.</p> <p><u>14 Mears</u>  20 and 24 Mears Avenue would have an additional issue of shadow cast by this development proposal resulting in reduced light.</p>	<p>The proposed shadow diagrams demonstrate that the proposal will maintain 3 hours of direct sunlight to the north-facing living areas and private open space of 20 Mears Avenue. 24 Mears Avenue is not affected by additional overshadowing.</p>

D47/22

D47/22

Issue	Comment
<p><b>Overdevelopment</b></p> <p><u>20 Mears Avenue</u></p> <p>The newly proposed upper bedroom and balcony is a structure which protrudes from the existing roofline, immediately above the end of the main tiled roof, outwards northwards, almost 2m. This will be exceptionally intrusive on my property, both visually and aurally. In short, and putting this in layman's parlance, the proposed development is buying a two bedroom house, socializing the increase to 3 or perhaps 4 bedrooms to the owner and socializing all the costs to the neighbourhood. I refer to DA 01 and submit that at the very least the upper storage area is and could be used as a bedroom and the lower storage area is still sufficient for a small bedroom.</p> <p>In short this is an ugly development proposal, designed to maximise the utility to the applicant, at minimal cost, ignoring almost completely any heritage aspects, actual or in a generalized sense. It will be a visual eyesore and quite possibly is not capable of being achieved in a purely technical sense (see my comments as to drainage).</p> <p><u>2/5 Mears Avenue</u></p> <p>I am objective to the negative visual and over development of properties in Mears Avenue. Currently I am being impacted by the alterations/additions at 7 Mears Avenue. This is a Heritage conservation street. Please don't spoil it.</p>	<p>The proposed first floor addition comprises a bedroom, ensuite and balcony. The storage area is located within the existing roof cavity. In total, the dwelling comprises two bedrooms and one study, plus living room, dining room, kitchen, laundry and bathroom. The proposed bulk and scale is considered reasonable, because :</p> <ul style="list-style-type: none"> <li>• The proposed addition does not dominate the existing semi-detached dwelling. The first floor level is recessed behind the existing roof apex.</li> <li>• The scale of the additions is subservient to the two storey terrace development to the west.</li> <li>• Council's Heritage Consultant is satisfied with the scale of the proposal, as discussed below.</li> </ul>
<p><b>Neighbour consultation</b></p> <p><u>20 Mears Avenue</u></p> <p>we are very disappointed that the owners of no 22 Mears Avenue did not discuss their application with us before lodging it, as recommended by the Council's Pre-DA Service.</p> <p>"The service also aims to provide information for discussion with neighbours so that potential conflicts may be avoided prior to an application being lodged."</p> <p><u>10 Mears Avenue</u></p> <p>Community expectation – The proposers have not consulted neighbours in any way — it would have been easy to do so and avoid current and future rancour.</p> <p><u>6 Mears Avenue</u></p> <p>My neighbour alerted me to this development application at 22 Mears Avenue. I am not sure why this application proposal was not sent to</p>	<p>Consultation between the applicant and neighbours is encouraged by Council, but cannot be enforced.</p> <p>Applications are notified in accordance with the provisions of Randwick Community Participation Plan 2019. When notifying adjoining land owners of a development proposal, the Council sends letters to owners within a 40m radius measured from each boundary of the development site. Tenants/land owners are not separately notified. This application was also advertised, with a sign displayed at the front of the subject site during the notification period.</p> <p>The amended plans were renotified and readvertised as per Randwick Community Participation Plan 2019.</p>

Issue	Comment
all street residents, as any additions/alterations that impinges on privacy, concerns us all.	
<b>Construction impacts</b> <u>20 Mears Avenue</u> We are very concerned that any development next door will cause considerable dust in our backyard which includes a pool. We are in our 70's and cleaning the pool requires great effort from us. Any dust in the backyard will make our pool unusable as it will be too difficult to clean. Our mechanical pool cleaner does not pick up fine dust. Our pool will also look unsightly. We recently installed a pool fence and have spent a lot of time getting the pool clean so it looks good. Additionally my husband has had asthma so has a further concern. We request that any development of 22 Mears Avenue include a wall with shade cloth between our houses to prevent all dust coming into our backyard. The Randwick Council Dust Control Guide should be used though we are not sure if 1*5 of the site length is high enough. Please review.	Conditions of consent are imposed to manage construction impacts, including dust.
<b>Structural adequacy</b> <u>12 Mears Avenue</u> Some years back when the last renovation was carried out on 22 Mears Avenue, it is my understanding that Council advised that the foundations of No 22 and 24 were not substantial in their existing condition to accommodate a second story. The then owners decided that there was too much additional work and expense to complete their desired exercise of an additional story. I would like to know if this area of the renovation has in any way been addressed - please advise accordingly prior to any approval of the renovation being granted.	Structural engineering is a consideration for the construction certificate stage of the development. Notwithstanding, a condition of consent is included to ensure a structural certification is to be provided prior to the issue of occupation certificate.

### 5.1. Renotification

- 20 Mears Avenue

Issue	Comment
<p>This document constitutes our objections to the amended plans DA 558/2021, pending receipt of the Council's Heritage Report, which we requested on 22 June 2022, when we may add more.</p> <p>The amended plans lodged indicate very minor physical changes. There has been a change in</p>	<p>As stated in the response to the submissions received prior to the renotification period, the proposal is considered satisfactory by Council's Heritage Consultant. The privacy and rear setback matters are also considered satisfactory. Refer to above.</p>

D47/22

Issue	Comment
<p>the roof pitch which we understand is a requirement of your heritage consultant. There has been the addition of a privacy screen to the proposed balcony on its western side which was expected. All our pre—existing objections remain and, in our submission, no notice has been taken of them— see our original objection separately attached.</p> <p>There is no revised Statement of Environmental Effect with the amended plans. The SEE's have incorrectly said that the alterations and additions proposed are minor, do not have any effect on the streetscape or highlight that our adjacent home is a "heritage item".</p> <p>Furthermore there is no revised heritage impact statement that complies with 5.10 (4) and (5) of the Randwick LEP, particularly in considering "the effect of the proposed development on the heritage significance of the item or area concerned".</p> <p>From the "heritage" aspect, the proposed structure, while no doubt complying with Council's requirements (that any new construction should not simply imitate the past but should endeavour to harmonise with it, while recognising that it is a new and separate structure), is a very banal mix of corrugated iron type metal and blank fascia type board. Notwithstanding the proposed lowering of the roof height, the construction will still be manifest from most parts of the front of the street, on either side.</p> <p>The "Brighton Terrace" of which we own the final terrace is believed to be the only terrace in the entire city which is double fronted with a centre entrance. It is in late Victorian Gothic style. The whole terrace of 10 heritage items is in very good, unified, condition, and "anchors" the entire street which is surrounded by generally later style and later date construction of significantly larger properties than the applicant's property, with a very robust and dignified curtilage. The proposed construction will damage this curtilage, not merely as to our adjacent property, but to the whole terrace and further along the street.</p> <p>Concerning the construction itself, Council's regulations 3.3.3 i) and ii) apply (see attached). On 21 June Lynette Wood spoke with a Council planning officer about these requirements. He</p>	

Issue	Comment
<p>spoke to her with words to the following effect "Once the requirements of the first subparagraph, (i) are met, and a higher setback is provided to the minimum, we don't consider the second paragraph ii)".</p> <p>We strongly disagree with this interpretation of paragraph (3.3.3 i) and ii) by the Council's officer. The requirements are not alternate. They are cumulative. The terrace in its totality, has balconies on the first floor of each individual terrace. There is an existing predominant rear setback line established by these terrace balconies on the first floor (see attached aerial view). This setback is the leading edge (north) of the balconies. This seems to be recognised by the existing terracotta roof line of the applicant's property which is roughly on this setback line. In other words this setback has been recognised for in excess of 100 years.</p> <p>The objective of setbacks is to ensure that rear setbacks of buildings are consistent with the surrounding buildings.</p> <p>It seems to us that this is indisputable. This predominant rear setback line of the balconies on our block has not been considered in this application. The proposed balcony in the development significantly exceeds it. It sets a precedent.</p> <p>We therefore submit that any balcony in this proposed development, at the very least, only be approved to the predominant rear setback line of the balconies in our urban block.</p> <p>However, as a separate issue, we are also very concerned that the proposal for any balcony in the development. It impacts on our privacy significantly and should be disallowed even if the construction incorporates a privacy screen (see attached before and after sketch from our home).</p> <p>As noted in our original objection letter, we have a pool that takes up the greater part of our backyard. We swim in it wearing more or less attire. We mind our young granddaughter, who is yet to turn two, every week. Her friends, as well as she, will be swimming in our pool. Having such an intrusive balcony overlooking our pool area at close range does not comply with section 5.3 of the DCP. The proposed privacy screen does not mitigate our significant</p>	

D47/22



D47/22

Issue	Comment
<p>loss of privacy, particularly given the involvement of children.</p> <p>We are not opposing our neighbour's development of a second storey. We are however very concerned about the proposed balcony. We ask that you reject it.</p>	

- 10 Mears Avenue

Issue	Comment
<p>The proposal apparently builds beyond the rear line ignoring Randwick DCP Rear Setbacks 3.3.3 (ii)</p> <p>The applicant's architect has continued to ignore this regulation and made no satisfactory adjustment.</p> <p>There is seemingly a blatant disregard of Council regulations that the 1st floor balcony at the rear fails to protect the privacy of neighbourhood dwellings.</p> <p>In particular the rear garden and pool privacy of No 20 Mears Avenue would be permanently destroyed or seriously impaired.</p> <p>As I have noted before, the continued disregard and flouting of these Council regulations on rear setbacks would be a major precedent affecting the heritage standards and values of the street.</p> <p>No attempt has been made by the applicants in No 22 to consult with neighbours, apart from a note on an inadequate privacy screen when the DA was first published.</p> <p>Some give and take now could avoid potentially prolonged misunderstanding in a cohesive Randwick street community.</p>	<p>As stated in the response to the submissions received prior to the renotification period, the proposal is considered satisfactory by Council's Heritage Consultant. The privacy and rear setback matters are also considered satisfactory. Refer to above.</p>

## 6. Relevant Environment Planning Instruments

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

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

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

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

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	On merit	0.83:1	Yes
CI 4.3: Building height (max)	9.5m	7.06m (Proposed additions)	Yes

The proposed floor space ratio satisfies the objectives of Clause 4.4 of the RLEP 2012 in the following ways:

- The proposed additional gross floor area comprises a bedroom, ensuite and storage (up to a height of 1.4m above FFL in the roof cavity). In total, the dwelling comprises two bedrooms and one study, plus living room, dining room, kitchen, laundry and bathroom.
- The proposed addition does not dominate the existing semi-detached dwelling. The first floor level is recessed behind the existing roof apex.
- The scale of the additions is subservient to the two storey terrace development to the west.
- Council's Heritage Consultant is satisfied with the scale of the proposal, as discussed below.

#### 6.2.1. Clause 5.10 - Heritage conservation

The site is located in High Cross Heritage Conservation Area, adjacent to Heritage Item No. 410 "Brighton Terrace" at 2-20 Mears Avenue. As required by Clause 5.10 of the RLEP, consideration must be given to the impact that any development may have upon the heritage conservation area and nearby heritage items.

The application has been considered by the Council's Heritage Consultant, City Plan. The Heritage Consultant raised concerns about the proposed setback and bulk of the proposed first floor addition in March 2022. Consultation, including a site meeting, between the Heritage Consultant and the Applicant/Architect were held between March 2022 to June 2022 to refine design amendments. Amended plans were received by Council on 14 June 2022.

The proposed design amendments to satisfy the heritage considerations include lowering the roof by 200mm and modifying the roof pitch.

Council's Heritage Consultant concludes that the revised proposal will be compatible with the symmetrical presentation of the roof form of the pair of cottages within Mears Avenue, and the High Cross Heritage Conservation Area generally.

Refer to Appendix 1 for the heritage referral comments.

## 7. Development control plans and policies

### 7.1. Randwick Comprehensive DCP 2013

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

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

## 8. Environmental Assessment

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

D47/22

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 8.1. Discussion of key issues

### Rear setback

Neighbour submissions have raised concerns about a non-compliance with the predominant rear setback alignment, specifically in relation to the proposed rear balcony. As per Clause 3.3.3, Part C1 of the DCP, the minimum setback requirement is 5.5m. The proposed first floor addition (including balcony) has a rear setback of 6.442m

The neighbour submissions reference the predominant rear setback alignment of the row of terraces in 2-20 Mears Avenue. It should be noted that this row of terraces are of a different building typology to the subject site, which is currently a single storey semi-detached dwelling.

**Figure 10** shows the rear setback alignment of the terraces at 12-20 Mears Avenue. This rear setback alignment is based on the two storey built form of the terraces. The terraces comprise a two storey rear wing, as well as single storey elements adjacent to the rear boundary.

**Figure 11** shows that the proposed first floor addition does not extend past the predominant rear setback alignment.

It should also be noted that heritage considerations means that the proposed first floor addition cannot be shifted towards Mears Avenue to increase the rear setback. The proposed addition is considered reasonable, containing a bedroom, ensuite and balcony. The roof cavity, containing storage, is considered unsuitable for habitable use due to poor amenity and insufficient floor to ceiling heights.

The proposed rear setback is therefore considered satisfactory.



**Figure 10.** Markup of rear setback alignment of 12-20 Mears Avenue (blue line)

## Privacy

The proposed balcony is oriented to the rear of the site and privacy screens are proposed to either side to mitigate overlooking. The balcony is only accessible from the master bedroom, which restricts its privacy impact – i.e. the adjoining bedroom use discourages use of balcony for entertaining purposes.

Page 60





**Figure 12.** Rear façade and private open space of 20 Mears Avenue. 22 Mears Avenue to the left.



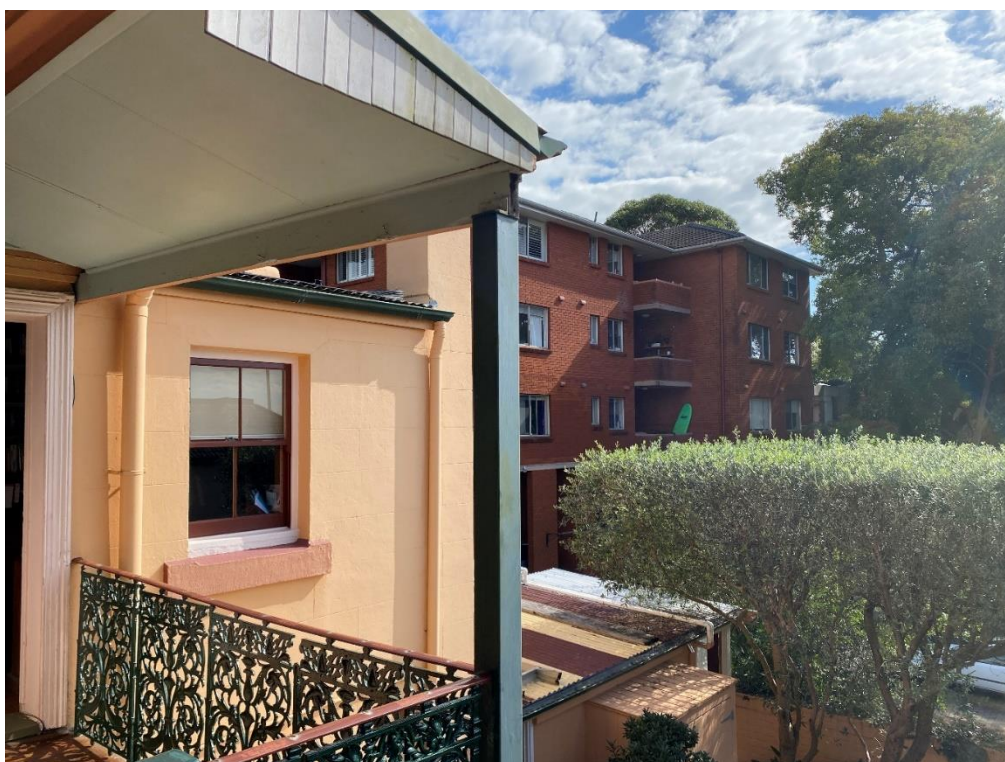
**Figure 13.** Rear façade and private open space of 20 Mears Avenue. 18 Mears Avenue to the right.



D47/22



**Figure 14.** View from balcony of 20 Mears Ave, looking north-east.



**Figure 15.** View from balcony of 20 Mears Ave, looking north-west





**Figure 16.** View from communal open space of 4 Ada Street, looking south towards 22 Mears Avenue and terrace row.



**Figure 17.** View from communal open space of 4 Ada Street, looking west towards 10A Mears Avenue.



D47/22

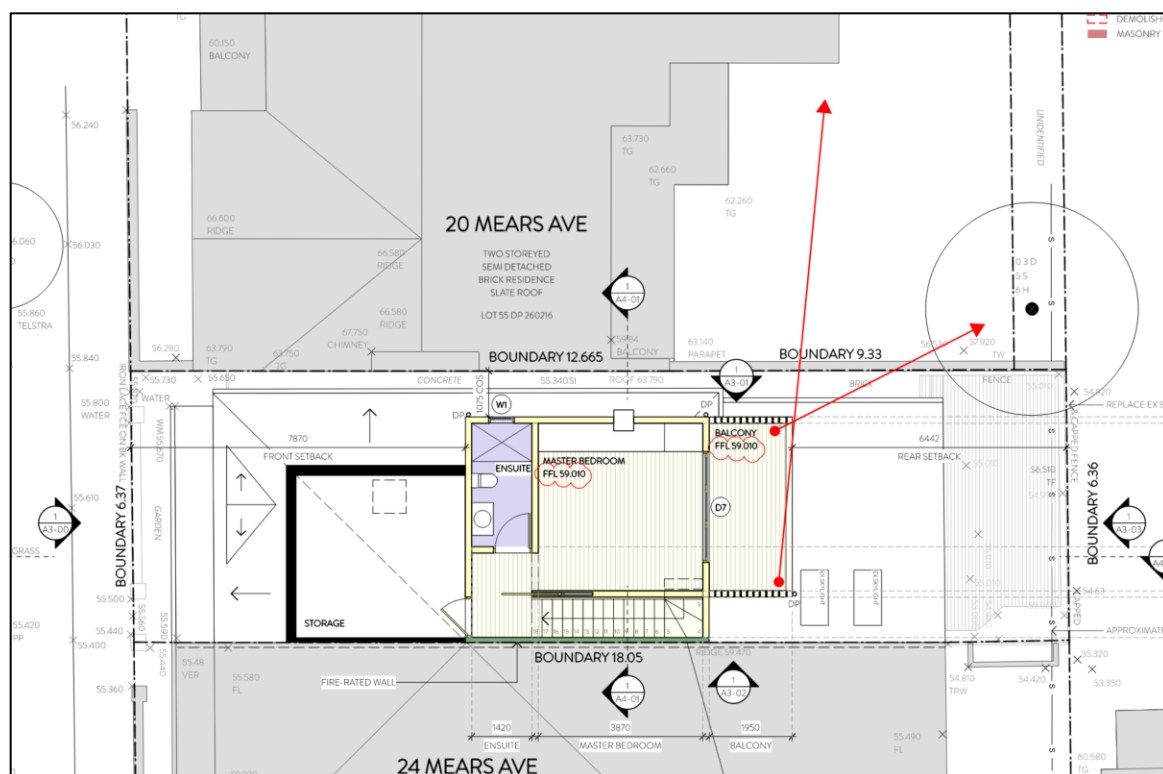


**Figure 18.** View from communal open space of 4 Ada Street, looking north towards 10A Mears Avenue.

The above photos demonstrate that balcony development is characteristic for residential buildings in the surrounding area. A proposed balcony addition is considered reasonable in this context.

The Explanation in Clause 5.3 Visual Privacy in Part C1 of the DCP elaborates: *In the urban context, complete privacy between dwellings is often not achievable or practicable, and some limited glimpses between neighbours can add to safety and social well being. The emphasis of the control is on minimising cross viewing and overlooking from the indoor and outdoor living areas of dwellings to maintain the amenity of the neighbours.*

To reiterate, the emphasis is on minimising overlooking from indoor and outdoor living areas – the proposed balcony is not considered an outdoor living area unlike the ground floor deck which is directly accessed from the indoor living areas. The associated bedroom use of the balcony is considered a passive use, which minimises privacy impact.



**Figure 19.** Proposed first floor plan – red arrows demonstrate potential views from proposed balcony to 20 Mears Avenue.

Nonetheless, Figure 19 demonstrates that the proposed balcony overlooks the private open space of 20 Mears Avenue. The proposed balcony also overlooks the common open space of 4 Ada Street to the north.

In order to mitigate the proposed privacy impact, a condition of consent shall be imposed to increase the rear setback of the proposed rear balustrade of the balcony by 950mm. This results in a balcony depth of 1m. The proposed privacy screens shall remain with a 6.442m rear setback. The proposed privacy screens will therefore extend 950mm past the rear balustrade of the balcony, minimising overlooking into 20 Mears and 24 Mears Avenue. The increased rear setback of the balcony will also assist in mitigate direct views into the common open space of 4 Ada Street.

### Deck

The proposal includes a deck on the ground level, directly accessed from the internal living areas. The deck is located a minimum 100mm from the side boundaries and 150mm from the rear boundary. The deck level is proposed to be RL 55.56, to match the indoor floor level. This is 0.57m above existing ground level.

The deck is an outdoor living area directly connected to the indoor living areas. Therefore, consideration must given to the privacy impact of the deck. There are no overlooking impacts on the west-adjointing property at 20 Mears Avenue, due to the presence of a high masonry wall on the boundary. However, due to the minimal setbacks, the deck will have an immediate privacy impact on the 4 Ada Street and 24 Mears Street.

However, the BCA/NCC requires a fire rated wall to be provided to decks located less than 900mm from a boundary. Clause 3.7.2.4 of the BCA/NCC states that the fire rated wall must extend from the footings or ground slab to the underside of a non-combustible roof covering or eaves lining. The wall must have an FRL of not less than 60/60/60 when tested from the outside; or be of masonry-veneer construction in which the external masonry veneer is not less than 90 mm thick; or be of masonry construction not less than 90 mm thick.



A fire rated wall would have an adverse bulk and shadow impact on the subject site and neighbouring properties. Therefore a condition of consent shall be imposed to require the deletion of the ground level deck.

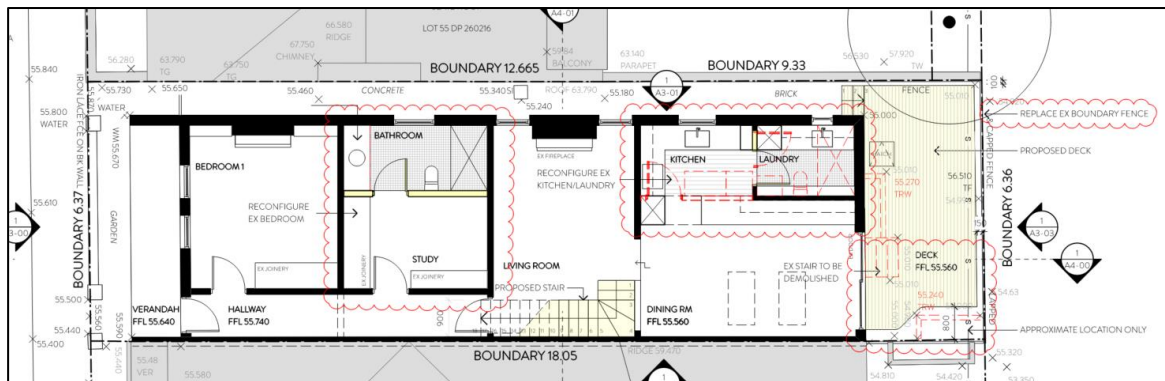


Figure 20. Proposed ground floor plan – 22 Mears Avenue.

## 9. Conclusion

That the application for alterations and additions to existing semi-detached dwelling, including internal works and addition of a first floor with rear-facing balcony, and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the existing streetscape and built form of the locality.

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. External Heritage Consultant

City Plan Heritage (CPH) has been engaged by Randwick City Council to undertake a heritage assessment of the Development Application (DA/558/2021) for works to the existing residence located at 22 Mears Avenue, Randwick NSW. The works are described in the Development Application as:

*Alterations and additions to existing semi-detached dwelling, including internal works and addition of a first floor with rear-facing balcony, and associated works (Heritage Conservation Area).*

The following assessment of the subject Development Application (DA) in relation to heritage matters incorporates the original heritage assessment and assessment of the modified design for your consideration.

#### 1. LOCATION OF THE SITE

The subject site is located at 22 Mears Avenue, Randwick and is described as Lot 1 in Deposited Plan 619345 (Parish of Alexandria, County of Cumberland) held by the NSW Land Registry Services. The house, together with 24 Mears Street form a pair of semi-detached cottages on the northern side of Mears Avenue.

The site is rectangular in plan and is bounded on its north by a two-storey brick residential building and garden, to the east by the semi-attached brick cottage (24 Mears Avenue), to the south by Mears Avenue, and to the west by a two-storey brick terrace house (20 Mears Avenue).

The footprint of the cottage covers a large section of the subject site. The main rooms are located in the southern section of the building under a terracotta tiled roof while the rear wing (north section) of the house is located under a low pitched metal roof with three skylights.

The subject site is zoned R3 - Medium Density Residential under Randwick LEP.



Figure 1. Map showing the location of 22 Mears Avenue, Randwick (the subject site). (Source: SIX Maps)

#### 2. HERITAGE STATUS AND SIGNIFICANCE

The subject site is not identified as a heritage item under Schedule 5 of the Randwick Local Environmental Plan (LEP) 2012. It is however, situated within the 'High Cross Spot Heritage Conservation Area' (C12), which is identified under Part 2 of Schedule 5 attached to Randwick LEP 2012 and protected under the *Environmental Planning and Assessment Act 1979* (NSW).

The 'High Cross Conservation Area' contains High Cross Park, urban areas to the north-east and south, and part of the Prince of Wales Hospital to the west, and is listed for aesthetic, historic or social significance. It is significant as:

*A major urban space providing a focus for nearby institutional buildings with many important religious and residential buildings in the surrounding area.*

The subject site is located within 'Suburban Allotment' 14 granted to Thomas Callahan by Crown grant on 16 December 1853, who sold it to Alexander McArthur four months later. McArthur returned to London in

the 1860s, leaving John See and Sir George Wigram Allen with the legal power to further subdivide and sell the land on his behalf.

William Mears purchased 1a1r35p (approx. 5944sqm) of land from John Lee on 11 February 1882, further subdividing the area. Following Mears' death in 1888 the land was held in trust for his widow, Eliza, until the youngest of his three children reach twenty-five years of age. Eliza died in 1905 and the Supreme Court of NSW allowed the land to be sold from 1906 for the benefit of their children.

Hugh Ekin of Kogarah purchased thirty perches of land on the 22 June 1907, selling it to James Murray in May the following year. Murray, an inspector of Schools, took out a mortgage on 29 May 1908, and appears to have commissioned the construction of the pair of cottages. He further subdivided the site retaining 22 and 24 Mears Avenue and selling the eastern section of the site containing 18¾ perches (approx. 474sqm) to a builder, William Broadbridge.



Figure 2: Extract from Heritage Map-Sheet HER\_007 attached to the Randwick LEP showing the location of 22 Mears Avenue Randwick within the High Cross Heritage Conservation Area. (Source: [https://eplanningdiprod.blob.core.windows.net/pdfmaps/6550\\_COM\\_HER\\_007\\_010\\_20200409.pdf](https://eplanningdiprod.blob.core.windows.net/pdfmaps/6550_COM_HER_007_010_20200409.pdf))



### 3. THE PROPOSAL

The proposed additions and alterations are shown in the DA/558/2021 documentation lodged with Randwick Council and include the following:

- Partial demolition of the roof and construction of a first-floor level including bedroom, en-suite, store, and balcony.
- Construction of Hebel block addition to party wall to maintain fire-separation throughout the roof space.
- Installation of two (2) roof lights (S1 and S3).
- Adaptation of ground floor layout.
- Construction of a stair to link ground and first floor.
- Subdivision of ground floor bedroom to form en-suite bathroom and store, and construction of one (1) door opening in north wall of main ground floor bedroom.
- Associated works including repairs and adaptation of existing services to suit the new layout of the house.
- Adaptation of hard and soft landscaping in rear (north) yard.

### 4. BACKGROUND

Following preliminary assessment of the proposed development and provision of concerns in relation to the setback and bulk of the proposed first floor addition, a site inspection and meeting with the Architect in association with the Council's planning officers have been carried out in May 2022. Further consultation with the Applicant and the new project architect Christina Sunario of Kuri Studio was also undertaken in May and early June 2022 to refine and discuss the details of the required design modifications. Modified drawings were submitted on 14 June 2022.

### 5. SUBMISSION

#### Original submitted DA drawings:

Documentation submitted to Randwick City Council, has been reviewed in this assessment of the proposed development. It is available online at:

<https://planning.randwick.nsw.gov.au/Pages/XC.Track.Advanced/SearchApplication.aspx?id=784279>.

This assessment has also taken into consideration the following documents and statutory instruments:

- *Randwick Local Environmental Plan 2012.*
- *Randwick Development Control Plan 2013.*

#### Modified Design Drawings

A set of revised design drawing have been submitted by Kuri Studio dated 14 June 2022. The assessment below combines both the original submitted DA assessment and the revised design drawings. Amended assessment is included in ***bold italic*** for easy reference.

## 6. ASSESSMENT OF PROPOSED DEVELOPMENT

### Randwick LEP 2012

Following review of the documentation submitted as part of the current development application (DA/192/2021), we have assessed the proposed development against the relevant heritage provisions and controls contained in the Randwick LEP 2012 and Randwick DCP 2013 respectively.

Randwick LEP 2012 Clause 5.10 Heritage Conservation	Discussion
<p><b>5.10 (2) Requirement for consent</b></p> <p><i>Development consent is required for any of the following -</i></p> <p><i>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—</i></p> <p>...</p> <p><i>(iii) a building, work, relic or tree within a heritage conservation area,</i></p> <p><i>(i)</i></p>	<ul style="list-style-type: none"> <li>A Development Application (DA/558/2021) has been lodged with Randwick City Council, the consent authority, to obtain consent to undertake the proposed works to 22 Mears Avenue Randwick as required under sub-clause (2) (a) (iii).</li> <li>The subject site is located within the 'High Cross Heritage Conservation Area'.</li> </ul>
<p><b>5.10 (5) Heritage assessment</b></p> <p><i>The consent authority may, before granting consent to any development -</i></p> <p><i>(a) on land on which a heritage item is located, or</i></p> <p><i>(b) on land that is within a heritage conservation area, or</i></p> <p><i>(c) on land that is within the vicinity of land referred to in paragraphs (a) or (b).</i></p>	<ul style="list-style-type: none"> <li>A Heritage Impact Statement (HIS) prepared by David L. Gray, Architect, was submitted as part of Development Application DA/558/2021. The submitted HIS does not address the existing condition, integrity and configuration of the subject semi-detached cottage in order to provide a better understanding of the relative heritage significance and contribution of the site. Although the HIS does not follow the Heritage NSW template for a HIS, this has not restricted our assessment of the proposed alterations and additions.</li> <li>The subject site is not identified as a heritage item under Schedule 5 Part 1- Heritage items attached to Randwick LEP.</li> <li>The subject site is located within the 'High Cross Heritage Conservation Area' (HCA). The HIS does</li> </ul>



Randwick LEP 2012 Clause 5.10 Heritage Conservation	Discussion
	not address the likely contribution of the subject site to the HCA.

### Randwick DCP 2013

The following table addresses the relevant controls of the Randwick DCP 2013.

Randwick DCP 2013 - Section B2 - 2.1 Heritage Items and Heritage Conservation Areas	Discussion:
<p><b>Controls - All Development</b></p> <p><i>i) Development must demonstrate how it respects the heritage values of the heritage item or the heritage conservation area (as detailed in the statements of significance and key characteristics outlined in this section of the DCP).</i></p>	<ul style="list-style-type: none"> <li>▪ The proposed first floor addition would be over the northwest section of the roof. It would be visible from the public domain and would alter the symmetrical presentation of the pair of cottages within the Mears Avenue streetscape.</li> <li>▪ The new work is designed in a contemporary architectural style to distinguish it from the original building fabric.</li> <li>▪ The form of the addition has been developed to minimise the weatherboard addition above the roofline. Despite this, the form is visually disruptive to the symmetrical appearance of the façade of 22 and 24 Mears Avenue.</li> </ul> <p><b><i>The revised design has considered the recommendations of the undersigned and as such has lower height and further setback to minimise visibility from the public domain and reduce asymmetrical appearance as much as possible.</i></b></p>
<p><i>ii) Common elements and features of the streetscape are to be identified in a streetscape analysis and incorporated into the design (e.g. view corridors, built form, fencing styles, extent of soft landscaping, significant trees and driveway locations).</i></p>	<ul style="list-style-type: none"> <li>▪ The garden and front fence between the main façade of the house and Mears Avenue would be retained.</li> <li>▪ No significant trees or fences would be removed or altered.</li> </ul>
<p><i>iii) New development should be consistent with important horizontal lines of buildings in the streetscape, in particular ground floor levels and eaves lines, where appropriate.</i></p>	<ul style="list-style-type: none"> <li>▪ The works would not alter the masonry façade of the semi-detached cottage. The main features and important horizontal lines common to both cottages would be retained.</li> </ul>

D47/22

D47/22

Randwick DCP 2013 - Section B2 - 2.1 Heritage Items and Heritage Conservation Areas	Discussion:
	<ul style="list-style-type: none"> <li>The visual impacts arise from changes to the symmetrical appearance of the square pyramidal form of the roof.</li> </ul> <p><b><i>As detailed above the bulk and setback of the proposed first floor addition has been modified to address the concerns in relation to the symmetrical appearance of the subject semi-detached houses.</i></b></p>
<p>iv) Large blank areas of brick or rendered walls should be avoided. Where this is not possible in the design, contrasting building materials and treatments must be used to break up the expanse of wall.</p>	<ul style="list-style-type: none"> <li>The south elevation of the first-floor addition would be set back from the main (Mears Avenue) façade to reduce its perceived bulk.</li> <li>The weatherboard cladding draws on the materiality of rear additions to Victorian and Federation houses in the area.</li> <li>New windows are limited to the side and rear elevations of the proposed first-floor addition.</li> </ul>
Randwick DCP 2013 - Clause B2.3 Scale & Form	Discussion:
<p><b>Controls</b></p> <p><b>All Development</b></p> <p>i) In streetscapes where development is of a consistent single storey height, upper floor additions are appropriate only if not readily visible from the street. However, ground floor rear addition remains the preferred option.</p>	<ul style="list-style-type: none"> <li>The first floor addition would be clearly visible from Mears Avenue. It is noted that there is limited area at the rear (north) of the existing semi-detached cottage to accommodate a ground floor rear addition.</li> <li>The weatherboard addition would alter the presentation of the pair of semi-detached cottages within the Holy Cross Heritage Conservation Area and the Mears Avenue streetscape.</li> </ul> <p><b><i>As detailed above the visibility of the proposed first floor addition has been addressed in the resubmitted revised design drawings by Kuri Studio.</i></b></p>
<p>ii) Attic style additions may be permissible, but there should be no visible alteration to the front of previously unaltered buildings. Front dormer windows are especially discouraged where a building itself is a heritage item, or part of a relatively unaltered semi-detached pair or row</p>	<ul style="list-style-type: none"> <li>The proposed first floor addition would alter the original shared roof form in views from Mears Avenue.</li> </ul> <p><b><i>Please refer to the above comments on the revised design. The design modifications included:</i></b></p> <ul style="list-style-type: none"> <li><b><i>Lowering the roof by 200mm</i></b></li> <li><b><i>Modification to the roof pitch to accommodate :</i></b> <ul style="list-style-type: none"> <li><b><i>Ceiling height, in accordance with BCA</i></b></li> <li><b><i>Roof over the balcony</i></b></li> </ul> </li> </ul>

<b>Randwick DCP 2013 - Clause B2.3 Scale &amp; Form</b>	<b>Discussion:</b>
<p><i>iii) Dormer windows and skylights must not be located to street elevations or where they will be prominent from a public place or dominate the original roof form. The design of dormer windows should generally be appropriate to the style of the building.</i></p>	<ul style="list-style-type: none"> <li>▪ The works include two new skylights located on the western and northern slopes of the roof. The skylight would be positioned to match the pitch of the existing roof and would have a low visual impact on views of the main elevation of the pair of cottages.</li> <li>▪ The skylight would be visible in limited views looking eastwards from Mears Avenue but would generally be concealed in views by the two-storey terrace house at 20 Mears Avenue.</li> <li>▪ No dormer windows are proposed as part of the application.</li> </ul>
<b>Randwick DCP 2013 - Clause B2.4 Siting and Setbacks</b>	<b>Discussion:</b>
<p><b>Controls</b> <b>All Development</b></p>	<ul style="list-style-type: none"> <li>▪ The existing setbacks of the cottage to Mears Avenue would be maintained.</li> </ul>
<p><i>i) Development must conform to the predominant front setbacks in the streetscape.</i></p>	
<p><i>ii) Development must respect side setbacks and rear alignments or setbacks of surrounding development.</i></p>	<ul style="list-style-type: none"> <li>▪ There is no heritage concern in relation to the side or rear setbacks proposed.</li> </ul>
<p><i>iii) Front and rear setbacks should be adequate to ensure the retention of the existing landscape character of the heritage item or conservation area and important landscape features.</i></p>	<ul style="list-style-type: none"> <li>▪ The front fence and garden would be retained.</li> </ul>
<p><i>iv) Any significant historical pattern of subdivision and lot sizes must be retained. Subdivision or site amalgamation involving heritage items or contributory buildings must not compromise the setting or curtilage of buildings on or adjoining the site.</i></p>	<ul style="list-style-type: none"> <li>▪ No changes to the subdivision pattern are proposed.</li> </ul>
<b>Randwick DCP 2013 - Clause B2.5 Detailing</b>	<b>Discussion:</b>
<p><b>Controls</b> <b>All Development</b></p>	<ul style="list-style-type: none"> <li>▪ The works have been designed in a contemporary style to be readily distinguished from the original semi-detached cottage.</li> </ul>

D47/22

<p><b>Randwick DCP 2013 - Clause B2.5 Detailing</b></p>	<p><b>Discussion:</b></p>
<p><i>i) Only detailing which is known to have been original to your building is acceptable. Do not add what was never there.</i></p>	<ul style="list-style-type: none"> <li>Although lower than the existing ridge height of the subject semi-detached cottage, the massing and bulk of the proposed addition would detract from the symmetrical presentation of the pair of semi-detached cottages within the Mears Avenue streetscape.</li> </ul> <p><b><i>Please refer to the above comments on the revised design. The revised design is the result of the further consultation with the Applicant and the Architects.</i></b></p>
<p><b>Randwick DCP 2013 - Clause B2.6 Materials, Finishes and Colour Schemes</b></p>	<p><b>Discussion:</b></p>
<p><b>Controls</b> <b>All Development</b> <i>i) Materials for pathways and driveways must be consistent with the character of the heritage item or heritage conservation area.</i></p>	<ul style="list-style-type: none"> <li>Not applicable; no additional pathways or driveways are proposed that would be visible from the public domain.</li> </ul>
<p><b>Randwick DCP 2013 Clause B2.7 Roofs and Chimneys</b></p>	<p><b>Discussion:</b></p>
<p><b>Controls</b> <b>All Development</b> <i>i) Attic rooms are to be contained within roof forms and should not dominate the street and visible side elevations.</i></p>	<ul style="list-style-type: none"> <li>The existing roof is to be partly demolished to accommodate the first-floor addition. A section of the addition, although lower than the existing ridge height, would be visible above the tiled roof, to accommodate the head height required for habitable rooms.</li> <li>The pitch of the proposed sheet metal roof has been developed to minimise the height of the addition.</li> </ul>
<p><b>Randwick DCP 2013 Section B2 - 4.6.4 High Cross Heritage Conservation Area Guidelines for change</b></p>	<p><b>Discussion:</b></p>
<p><b>Alterations &amp; Additions</b> <i>Rear additions should not be prominent in the streetscape nor compromise the integrity of the original roof. Additions to terraced buildings should not compromise the integrity of relatively intact rear wings and should be</i></p>	<ul style="list-style-type: none"> <li>The application is for a first-floor addition to a semi-detached cottage including a section visible above the original western roof hip line and plane.</li> <li>The proposed building form and materials (metal roof with weatherboard walls) would be recognisable as new works but would detract from the symmetrical presentation of the pair of cottages within Mears Street and the High Cross HCA generally.</li> </ul>



Randwick DCP 2013 Section B2 - 4.6.4 High Cross Heritage Conservation Area Guidelines for change	Discussion:
<i>consistent with the scale and form of the surrounding rear wings.</i>	<ul style="list-style-type: none"> <li>▪ The scale of the development is compatible with the two-storey development located in the immediate area.</li> <li>▪ One existing chimney at the rear roof plane would be partly obscured by the roof addition. The front chimney will remain unobstructed.</li> <li>▪ The construction of a fire-rated wall within the roof space would have low heritage impact as it would not be visible on the exterior of the semi-detached cottage. The fire-separation barrier would not alter the symmetrical street presentation of the pair of cottages.</li> </ul>
<p><b>Carparking</b></p> <p><i>Where driveway access along the side of the dwelling was available, garages were traditionally provided in the rear yard of the dwelling, this remains the preferred location. Otherwise an open carport can be provided to the side of the dwelling, set back from the front wall of the dwelling.</i></p>	<ul style="list-style-type: none"> <li>▪ Not applicable. No driveways or off-street parking are included in this application.</li> <li>▪ We have no heritage concerns in regard to this matter.</li> </ul>

## 7. CONCLUSIONS AND RECOMMENDATIONS

Having reviewed the documentation submitted as DA558/2021 we conclude:

- No. 22 and 24 Mears Avenue form a pair of Federation cottages located within the High Cross Heritage Conservation Area. However, neither 22 nor 24 Mears Avenue are currently identified as heritage items under Randwick LEP.
- ***The revised design submitted by Kuri Studio on 14 June 2022 is the result of the further consultation with the Applicant and the Architects undertaken following the site inspection in May and June 2022. The revised design responds as much as practicable incorporating the following:***
  - ***Lowering the roof by 200mm***
  - ***Modification to the roof pitch to accommodate :***
    - ***Ceiling height, in accordance with BCA***
    - ***Roof over the balcony***
- ***Based on the revised design and above noted modifications, although the proposed first floor addition will alter the symmetrical roof form of the semi-detached pair of cottages, due to the***



*further lowered roof height the revised proposal would be compatible with the symmetrical presentation of the roof form of the pair of cottages within Mears Avenue, and the High Cross Heritage Conservation Area generally.*

- *The scale of the addition is generally compatible with the residential development on the surrounding area.*

*The revised design as documented by Kuri Studio dated 14 June 2022 is acceptable in relation to heritage matters.*

*The following Condition of Consent is recommended for inclusion in a consent associated with the subject DA/588/2021:*

- *A brief digitally based 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 Film or Digital Capture. One digital copy (DVD or USB) of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for 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 format.*

We trust the above heritage assessment will assist Randwick City Council in its assessment of the Development Application DA/588/2021 in relation to heritage matters. We will be happy to assist further should you have any questions or require clarification on any aspect of the above assessment.

D47/22

## Appendix 2: DCP Compliance Table

### 3.1 Section B2: Heritage Conservation

The relevant provisions under Section B2 have been addressed by Council's external heritage consultant in Appendix 1 above.

### 3.2 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R3	
<b>2</b>	<b>Site planning</b>		
<b>2.3</b>	<b>Site coverage</b>		
	<b>Up to 300 sqm = 60%</b> 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 140.3m <sup>2</sup>  Proposed first floor and deck addition do not constitute any additional site coverage.	As per existing
<b>2.4</b>	<b>Landscaping and permeable surfaces</b>		
	i) <b>Up to 300 sqm = 20%</b> 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.	Site = 140.3m <sup>2</sup>  The existing deep soil provision is limited to a small garden at the front of the dwelling, less than 900mm wide.  The proposal does not impact existing deep soil area. The site is constrained by the small site area of 140.3m <sup>2</sup> .	As per existing
<b>2.5</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	<b>Up to 300 sqm = 5m x 5m</b> 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 140.3m <sup>2</sup>  Existing and proposed = 2.9m by 6.3m	As per existing.
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = On merit</b>	Proposed FSR= 0.83:1	Yes
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	Proposed additions = 7.06m	Yes
	i) Maximum external wall height = 7m	Proposed = 6.4m	Yes

D47/22

D47/22

DCP Clause	Controls	Proposal	Compliance
	(Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded		
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	Proposed= 7.87m  First floor addition setback behind apex of existing roof.	Yes
<b>3.3.2</b>	<b>Side setbacks:</b> Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 <sup>st</sup> floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1 <sup>st</sup> floor), 1800mm above.  Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum= 900mm Proposed= 1.075m	Yes
<b>3.3.3</b>	<b>Rear setbacks</b> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts  Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 5.5m Existing = 2.915m Proposed = 6.442m	Yes
<b>4</b>	<b>Building design</b>		

DCP Clause	Controls	Proposal	Compliance
<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>	Proposal is articulated to the street, with the addition recessed behind the existing roof apex.  Side elevation does not exceed 12m.	Yes
<b>4.2</b>	<b>Additional Provisions for symmetrical semi-detached dwellings</b>		
	i) Enhance the pair as coherent entity: <ul style="list-style-type: none"> <li>behind apex of roof; low profile or consistent with existing roof</li> <li>new character that is first floor at front only after analysis streetscape outcome</li> </ul> ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain	Proposal is located behind apex of roof, and constructed to the common boundary of the adjoining semi.	Yes
<b>4.4</b>	<b>Roof Design and Features</b>		
	<i>Rooftop terraces</i> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <i>Dormers</i> iii) Dormer windows don't dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Celestial windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	Skillion roof for the first floor addition does not dominate the existing dwelling.  Proposed roof height and pitch has been reviewed by Council's Heritage Consultant, who has advised that the proposed roof is satisfactory in relation to heritage impacts.	Yes
<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.	Conditions of consent are imposed to require the submission of colours and materials.	Conditioned.

D47/22

D47/22

DCP Clause	Controls	Proposal	Compliance
	vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)		
<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 lot is located on the northern side of Mears Avenue, and oriented on a north-south axis. The proposal does not impact existing solar access to the living areas and private open space of the subject site.	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 the neighbouring allotments.</li> </ul>	The lot is located on the northern side of Mears Avenue, and oriented on a north-south axis. The proposal maintains 3 hours of direct solar access to the north-facing living areas and private open space of the neighbouring properties.	Yes
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> <li>Skylights (ventilated)</li> </ul>	BASIX Certificate submitted, demonstrating compliance with energy efficiency	Yes



DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> <li>• Clerestory windows</li> <li>• Fanlights above doorways</li> <li>• Highlight windows in internal partition walls</li> </ul> ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	and thermal comfort requirements.	
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	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: <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> ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	Proposed ensuite bathroom window W1 directly faces blank eastern façade of terrace at 20 Mears Ave. It does not provide direct views into the windows or private open space of neighbouring properties.  Rear-facing master bedroom window does not face any habitable room windows of adjacent dwellings. This window is setback 8.39m from the rear boundary. The passive use of the room minimizes privacy impact on neighbouring properties.	Yes
	<b>Balcony</b>		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen	A condition of consent is imposed to increase the rear setback of the proposed rear balustrade of the balcony to	Conditioned

D47/22

D47/22

DCP Clause	Controls	Proposal	Compliance
	planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	mitigate overlooking. Refer to Key Issues.	
<b>5.4</b>	<b>Acoustic Privacy</b>		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer.	The proposed balcony width, accessed only from the master bedroom, is limited to 1.9m. The size of, and access to the balcony mitigates acoustic privacy impact.	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 adjoining property at 20 Mears Ave enjoys district and water views from the attic level window (sill height RL 64.1). The proposed height of the additions (RL 62.24) maintains the view corridor for 20 Mears Avenue.	Yes
<b>7</b>	<b>Fencing and Ancillary Development</b>		
<b>7.1</b>	<b>General - Fencing</b>		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	Proposal includes replacement of existing rear and eastern side boundary fence to a height of 1.8m, of timber construction.	Yes
<b>7.3</b>	<b>Side and rear fencing</b>		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	Existing rear and eastern side boundary fence replaced to a height of 1.8m, of timber construction.	Yes

---

**Responsible officer:** Eunice Huang, Environmental Planning Officer

**File Reference:** DA/558/2021

D47/22

D47/22

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

<b>Folder /DA No:</b>	DA/558/2021
<b>Property:</b>	22 Mears Avenue, RANDWICK NSW 2031
<b>Proposal:</b>	Amended plans for roof lowered by 200mm, first floor finished floor level increased by 150mm, new 1.8m rear boundary fence, modification to rear deck and internal configuration. Original proposal: Alterations and additions to existing semi-detached dwelling, including internal works and addition of a first floor with rear-facing balcony, and associated works (Heritage Conservation Area).
<b>Recommendation:</b>	Approval

**Development Consent Conditions****GENERAL CONDITIONS**

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

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

**Approved Plans & Supporting Documentation**

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

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>
A1-00	Kuri Studio	14 June 2022
A2-00	Kuri Studio	14 June 2022
A2-01	Kuri Studio	14 June 2022
A2-02	Kuri Studio	14 June 2022
A3-00	Kuri Studio	14 June 2022
A3-01	Kuri Studio	14 June 2022
A3-02	Kuri Studio	14 June 2022
A3-03	Kuri Studio	14 June 2022
A4-00	Kuri Studio	14 June 2022
A4-01	Kuri Studio	14 June 2022

<b>BASIX Certificate No.</b>	<b>Dated</b>
A428804	23 August 2021

**Amendment of Plans & Documentation**

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



- a. The entire northern (rear) balustrade of the rear first floor balcony shall be pulled back by at least 950mm from the northern edge of the balcony and the entire area north of the balustrade shall be retained as non-trafficable area.
- b. The entire upper semi-opened portion of the northern (rear) balustrade shall be constructed of obscured glazing.
- c. The rear ground floor deck shall be deleted and the existing stairs to the rear yard area shall be retained.
- d. The privacy screens to the entire eastern and western sides of the rear first floor balcony must be constructed with either:
  - Fixed lattice/slats with individual openings not more than 30mm wide;
  - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

**Photographic Archival Record**

3. A brief digitally based 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 4.17(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 Film or Digital Capture. One digital copy (DVD or USB) of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records incorporating the following:
  - a. 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.
  - b. Digital copies of the archival photographs in JPEG format.

**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**

4. 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**

5. 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**

6. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$308,000 the following applicable monetary levy must be paid to Council: \$3,080.00

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

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

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

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**

7. A development compliance and enforcement fee of \$646.80 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**

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

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

**Sydney Water Requirements**

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

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

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

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

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals

- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ in online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

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

**REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE**

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

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

**Compliance with the Building Code of Australia & Relevant Standards**

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

**BASIX Requirements**

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

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

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

**Stormwater Drainage**

12. A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-
- a) Surface water/stormwater drainage systems must be provided in accordance with the relevant provisions of the Building Code of Australia (Volume 2) and relevant Standards;
  - b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
  - c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;

- d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
- e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works:

#### REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

#### Certification and Building Inspection Requirements

13. Prior to the commencement of any building works, the following requirements must be complied with:
- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.
- A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
- b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
- c) a *principal contractor* must be appointed for the building work, or in relation to residential building work, an *owner-builder* permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the *Principal Certifier* and Council are to be notified accordingly; and
- d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and
- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

#### Home Building Act 1989

14. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, the relevant requirements of the *Home Building Act 1989* must be complied with.

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

#### Dilapidation Reports

15. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:



- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- as otherwise may be required by the *Principal Certifier*.

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

The dilapidation report must be submitted to the Council, the *Principal Certifier* and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).

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

16. 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**

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

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

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

**Demolition & Construction Waste Plan**

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

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

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

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

**Public Utilities**

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

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

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

**REQUIREMENTS DURING CONSTRUCTION & SITE WORK**

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

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

**Inspections during Construction**

20. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

**Site Signage**

21. 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**

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

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

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

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

23. 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**

D47/22

24. 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**

25. 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.
26. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*:
- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
  - when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
  - when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
  - as may be required by the *Principal Certifier*.

The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the *Principal Certifier*.

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

27. Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

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

#### **Public Safety & Site Management**

28. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.

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

- b) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- c) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- d) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

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

- e) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open out into the road or footway.
- f) Site fencing, building materials, bulk bins/waste containers and other articles must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- g) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- h) A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.
- i) Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

#### **Site Signage**

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

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

#### **Survey Requirements**

30. A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building to the satisfaction of the Principal Certifier:

- prior to construction (pouring of concrete) of the footings or first completed floor slab,
- upon completion of the building, prior to issuing an occupation certificate,



- as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council, if the Council is not the Principal Certifier for the development.

#### **Building Encroachments**

31. 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**

32. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

#### **BASIX Requirements & Certification**

33. 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.

#### **Structural Certification**

34. 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 Certifier. A copy of which is to be provided to Council with the Occupation Certificate.

#### **OPERATIONAL CONDITIONS**

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

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

#### **External Lighting**

35. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.

#### **Waste Management**

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

#### **Plant & Equipment – Noise Levels**

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

In this regard, the operation of the plant and equipment shall not give rise to an LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

**GENERAL ADVISORY NOTES**

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

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.
- Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$3,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.
- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:
- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
  - An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
  - Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.
- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.
- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA) and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards and you are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.
- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
  - Operate a crane or hoist goods or materials over a footpath or road
  - Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

D47/22

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
  - an access order under the *Access to Neighbouring Land Act 2000*, or
  - an easement under section 88K of the *Conveyancing Act 1919*, or
  - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.
- Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).
- A9 The finished ground levels external to the building must be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au) and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

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