

# Randwick Local Planning Panel (Electronic) Meeting

Thursday 10 November 2022



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

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Teams on Thursday, 10 November 2022 at 1pm

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

#### **Development Application Reports**

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Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D66/22

**Subject:** 20 Paterson Street, Matraville (DA/280/2022)

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### Executive Summary

<b>Proposal:</b>	Torrens title subdivision of an approved attached dual occupancy development into two allotments
<b>Ward:</b>	South Ward
<b>Applicant:</b>	The Planning Hub
<b>Owner:</b>	Shahin Nourozi Ut Pty Ltd
<b>Cost of works:</b>	Nil
<b>Reason for referral:</b>	Variation to the minimum subdivision lot size development standard by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the minimum subdivision lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/280/2022 for Torrens title subdivision of an approved attached dual occupancy development into two allotments at No. 20 Paterson Street, Matraville, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/280/2022 - 20 Paterson Street, MATRAVILLE

D66/22

D66/22



## 1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for minimum subdivision lot size by more than 10%.

The proposal seeks development consent for Torrens title subdivision of an approved dual occupancy development into two (2) allotments.

The key issues associated with the proposal relate to non-compliance with the minimum subdivision lot size of 400m² specified by Clause 4.1 of RLEP 2012 and the non-compliance with the provisions of Clause 2.1 of Part C1, RDCP 2013 in relation to subdivision. The proposed land subdivision is supported given the consistency of the land subdivision with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP.

The proposal is recommended for approval subject to standard conditions.

## 2. Site Description and Locality

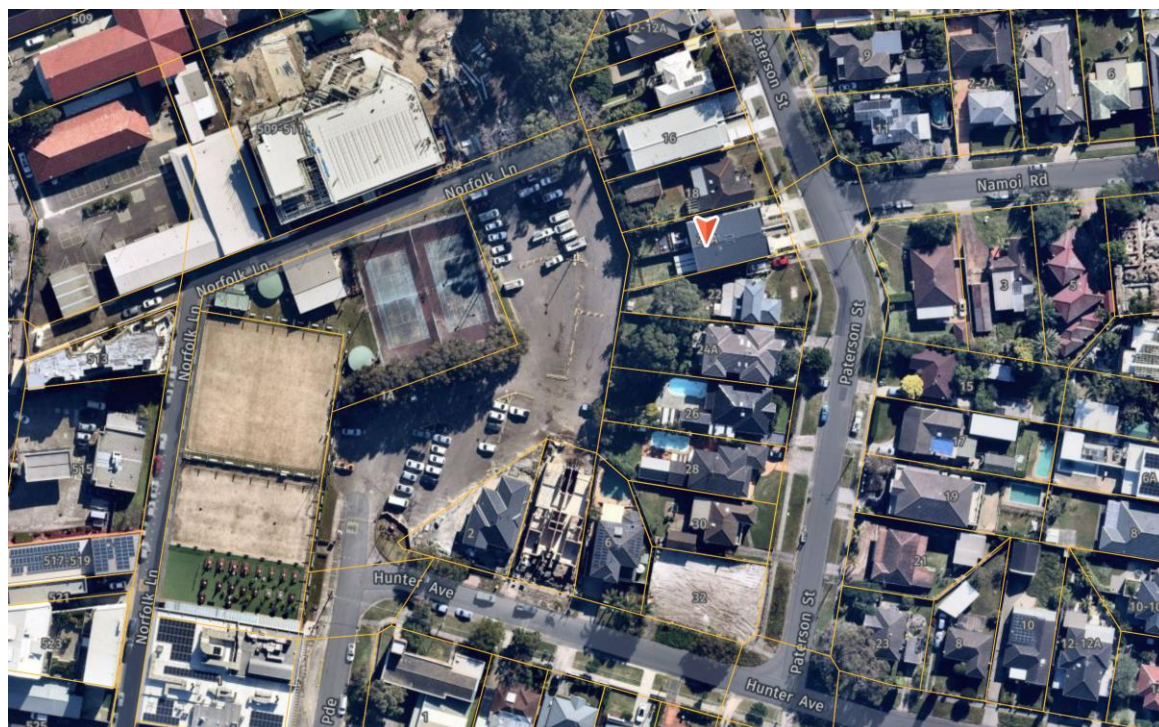
The subject site is known as 20 Paterson Street, Matraville and is legally described as Lot 12 DP 31505. The site is located on the western side of Matraville, between Pillars Place to the north and Hunter Avenue to the south. The site is 632.3m², is irregular in shape and has a 15.24m frontage to Paterson Street to the east. The northern side boundary has a length of 40.843m; the southern side boundary has length of 45.834m. The land falls approximately 2.28m in a south-easterly direction from the rear boundary to the street boundary.



The site contains a two storey attached dual occupancy, with vehicular access from Paterson Street.

The site is located within a low density residential area, comprising dwelling houses, dual occupancies and semi-detached dwellings. The site is adjoined to the rear (west) by the car park of Matraville RSL. Matraville, a B2 Local Centre zone is located 115m to the west of the subject site. St Agnes Catholic School is located 32m to the north-west.

There is no predominant subdivision pattern in the immediate locality. Allotments on the western side of Paterson vary in shapes and sizes. This includes substantial variances in allotment depths and frontage widths. The smallest of these lots is No. 12 Paterson Street, which has an area of 262m<sup>2</sup>. The eastern side of Paterson Street displays more consistency in its allotment pattern, but likewise comprises variance in shapes and sizes.



**Figure 1.** Aerial view of site and locality - 20 Paterson Street, Matraville

### 3. Relevant history

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

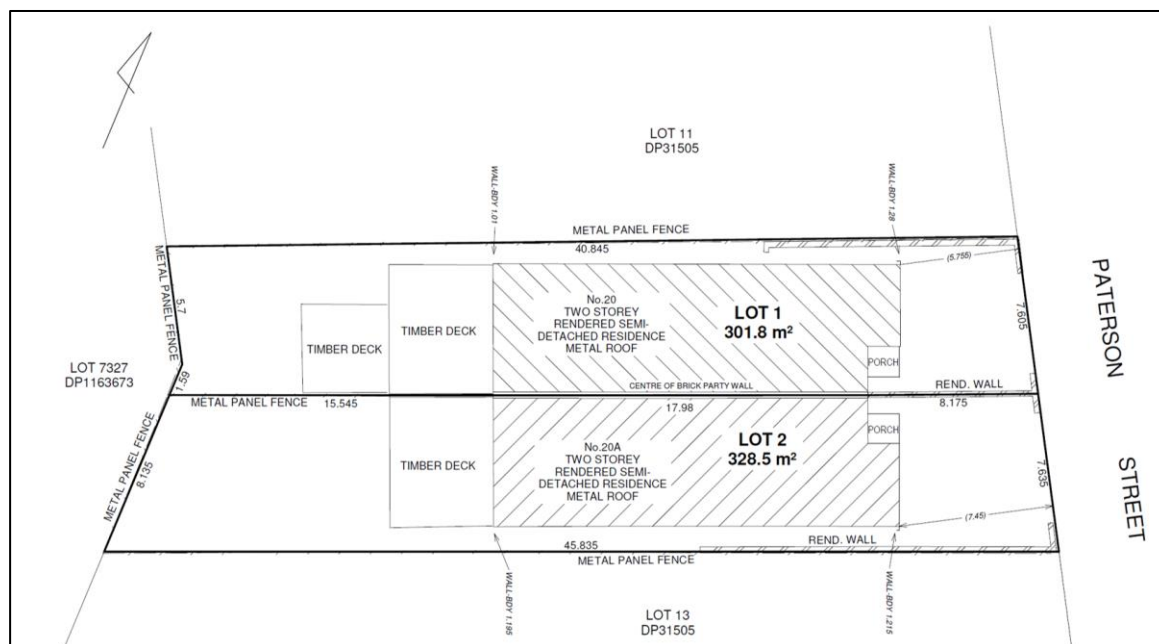
- DA/229/2018 – Development Application No. DA/229/2018 was approved on 1 June 2018 for demolition of the existing structures, construction of a 2 storey attached dual occupancy with garages, landscaping and associated works.
- DA/229/2018/A – Modification Application No. DA/229/2018/A was approved on 13 June 2019 for modification of the approved development by replacement of ground level storage with playroom, infill of first floor void with study, reconfiguration of first floor, changes to roof and windows.

### 4. Proposal

The proposal seeks development consent for the Torrens Title subdivision of the approved dual occupancy development into two (2) allotments. The proposed lots shall comprise the following:

	Lot Size	Front Boundary	Rear Boundary (Western)	Side Boundary	Side Boundary

		(Eastern)		(Northern)	(Southern)
<b>Lot 1 (20)</b>	301.8m <sup>2</sup>	7.605m	Irregular	40.845m	Irregular
<b>Lot 2 (20A)</b>	328.5m <sup>2</sup>	7.635m	8.135m	Irregular	45.835m



**Figure 2.** Proposed subdivision plan - 20 Paterson Street, Matraville

## 5. Notification

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

## 6. Relevant Environment Planning Instruments

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

The site is zoned R2 under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent, pursuant to Clause 2.6 of RLEP 2012.

The R2 zone permits a variety of low density housing forms including dwelling houses, semi-detached dwellings, boarding houses, and attached dual occupancies, and the objectives of the R2 zone aim to ensure that a mix of housing options are provided to facilitate the housing needs of the community. The relevant objectives of the R2 zone are considered below:

- To provide for the housing needs of the community within a low density residential environment.
- To encourage housing affordability.

On 6 September 2022, Council endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m<sup>2</sup> to 275m<sup>2</sup>, with the exception of land within a Heritage Conservation Area.

In considering the provision of this draft LEP under Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, the proposed land subdivision is consistent with the minimum lot size requirements and the housing needs for the community within the R2 zone.

In addition, this will encourage housing affordability by providing increased housing options for the community. As such, the proposal meets the housing needs of the community in the R2 zone and is consistent with the Draft Planning Proposal and amendments to the Randwick LEP.

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

The proposed subdivision lot sizes are consistent with the desired future character of the area; in that it meets the requirements of the draft minimum lot sizes as per the draft Planning Proposal and amendments to the Randwick LEP.

- *To protect the amenity of residents.*

It is considered that imposition of minimum lot sizes pursuant to Clause 4.1 of RLEP 2012 are in order to prevent the subdivision of development where the resultant lots are undersized and inappropriate. As such, establishing a minimum lot size ensures that the amenity of neighbouring residents and occupants of the development is maintained. As discussed above, the proposed subdivision is consistent with the desired future characteristic of lot sizes as per the Draft Planning Proposal and amendments to the Randwick LEP. As such, the proposal protects the amenity of residents.

In view of the above, the proposed development is found to be consistent with the objectives of the R2 zone.

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

Clause	Development Standard - Current	Proposal	Compliance (Yes/No)
Cl 4.1: Subdivision Lot Size (min)	400m <sup>2</sup>	Lot 1 (20) = 301.8m <sup>2</sup>	<b>No</b>
		Lot 2 (20A) = 328.5m <sup>2</sup>	<b>No</b>

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

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

### 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.1: Lot Size (min)	400m <sup>2</sup>	Lot 1 (20) = 301.8m <sup>2</sup>	98.2m <sup>2</sup>	24.55%
		Lot 2 (20A) = 328.5m <sup>2</sup>	71.5m <sup>2</sup>	17.875%

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

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

4. *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

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



will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

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

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

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

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

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

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

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

**7.1. Exception to the Minimum Lot Size development standard (Cl 4.1)**

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

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

The applicant's written request seeks to justify the contravention of the minimum lot size development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved. The applicant's written request also argues that the development standard has been abandoned by Council.

The objectives of the lot size standard are set out in Clause 4.1 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

- (a) *to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,*

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

"The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). It is noted that the existing built form will be retained and the proposed subdivision will not result in any amenity impacts on adjoining properties in terms for views, solar access, overshadowing and the like."

- (b) *to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,*

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

"The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). The subdivisions will not have an impact on natural or cultural features, including heritage items, and to retain special features such as trees and views."

- (c) *to ensure that lot sizes are able to accommodate development that is suitable for its purpose.*

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

"The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). The subject site as subdivided will continue to be suitable for a dual occupancy development."

The applicant's written request also argues that the development standard has been abandoned by Council:

"Clause 4.1 is considered to have been abandoned by Council. This is evident by the adoption of the Draft Randwick Comprehensive Planning Proposal which is currently at finalisation stage. Council Officers have advised that they are now in a position to determine a subdivision application that satisfies the minimum lot size development standards of the Draft LEP.

The LEP changes relevant to the variation request includes changes to 'the minimum lot size for all land zoned R2 LGA-wide but excluding heritage conservation areas from 400m<sup>2</sup> to 275m<sup>2</sup>. The proposed lot sizes of 301.8m<sup>2</sup>(Lot 1) and 328.5m<sup>2</sup>(Lot 1) comply with the minimum 275m<sup>2</sup> prescribed in the Draft LEP.

It is therefore clear that there is intent from Council to amend existing provisions to the minimum lot size development standard, therefore clearly demonstrating that Council have abandoned the minimum lot size of 400m<sup>2</sup>. This is also reflective of a number of approval issued by Council which contravenes the minimum lot sizes for a dual occupancy.

Therefore, it is considered that compliance is unreasonable and unnecessary in the circumstances of the case."

Assessing officer's comment:

The minimum lot size of 400m<sup>2</sup> aims to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties by ensuring that subdivision of land is consistent with the existing and desired character of the area. Furthermore, proposed lot sizes should be able to accommodate development that is suitable for its purpose.

The current planning controls and development standards aim to ensure that new semi-detached dwellings have sufficient size and configuration to maintain a reasonable level of amenity to surrounding properties.

It is noted that on 6 September 2022, Council endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m<sup>2</sup> to 275m<sup>2</sup>, with the exception of land within a Heritage Conservation Area.

In considering the provision of this draft LEP, the proposed land subdivision is consistent with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP.

As such, it is considered that compliance with the development standard is unreasonable or unnecessary, as Council has endorsed changes to the minimum lot size requirements and the changes to the subdivision and development of lots within the R2 zone.

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

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

- The proposed subdivision is consistent with the objectives of the zone and relevant controls of Clause 4.1.
- The proposal does not result in any adverse impact from adjoining properties or streetscape.
- The proposed lot sizes are consistent to a number of approved subdivisions in proximity to the site and therefore development standard has been abandoned by Council.
- The Randwick Comprehensive Planning Proposal seeks to amend the lot size applicable to Dual Occupancy and the development as proposed would comply with the new envisaged controls.
- The objectives of the LEP are achieved in this instance.

The applicant presents the following table of approved developments as justification that Council has abandoned the current lot size control for dual occupancies.

Previously Approved Subdivision in Close Proximity to the Subject Site			
DA No & Address	Proposed	Comment	Approved
<b>DA/870/2018 28-28A Windsor Street, Matraville</b>	Torrens title subdivision of existing dual occupancy	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>• Minimum size of Lot 1 = 275.03m<sup>2</sup></li> <li>• Minimum size of Lot 2 = 328.63m<sup>2</sup></li> </ul>	07.12.18
<b>DA/880/2018 12-12A Paterson Street Matraville</b>	Torrens title subdivision of existing dual occupancy	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>• Area of Lot 100 = 262.4m<sup>2</sup></li> <li>• Area of Lot 101 = 315.3 m<sup>2</sup></li> </ul>	11.12.18
<b>DA/29/2020 29-29A Windsor Street, Matraville.</b>	Torrens title subdivision of a newly constructed dual occupancy into two separate lots	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>• Lot 1 = 382.31sqm</li> <li>• Lot 2 = 383.18sqm</li> </ul>	31.03.20
<b>DA/129/2020 3 Paterson Street MATRAVILLE</b>	Torrens title subdivision of a dual occupancy into two allotments.	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>• Lot 1 = 294.3m<sup>2</sup></li> <li>• Lot 2 = 328.1 m<sup>2</sup></li> </ul>	14.05.20



Assessing officer's comment:

As noted above, the proposal is in keeping with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the Draft Planning Proposal and amendments to the Randwick LEP which has been endorsed by Council. The Planning Proposal was endorsed to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m<sup>2</sup> to 275m<sup>2</sup>, with the exception of land within a Heritage Conservation Area.

The proposed lot sizes, at 301.8m<sup>2</sup> and 328.5m, meet the draft requirements for minimum lot size. The subject site is not within a Heritage Conservation Area.

However, Council does not agree that the development standard has been abandoned on the basis that there are a number of similar approved subdivisions in proximity to the site. All the cited examples in the above table were approved under Clause 4.1D of RLEP 2012.

Clause 4.1D of RLEP 2012 was introduced in August 2018 and permits the subdivision of dual occupancy developments approved prior to 6 July 2018 in accordance with the provisions of the SEPP (Exempt and Complying Development Codes) 2008. The relevant provisions of this SEPP previously allowed for a minimum Torrens title subdivision lot size of 240m<sup>2</sup>; this was amended on 1 July 2020 so that the SEPP provisions for Torrens title subdivision lot size were consistent with Council's minimum lot size development standard. Hence, none of the cited examples demonstrate that Council has abandoned the development standard under Clause 4.1.



**Figure 3.** Approved subdivisions cited by applicant, with blue outline.  
Subject site in green.

It is considered that in this instance there is sufficient environmental planning grounds that would warrant a variation to the minimum lot size standard. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify

contravening the development standard, based on the provisions outlined in the draft Planning Proposal and amendments to the Randwick LEP.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Minimum Subdivision Lot Size standard and R2 zone is provided below:

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

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

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

The objectives of R2 zone are:

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

The applicant seeks to demonstrate that the proposal meets the objectives of the R2 zone in the following way:

- The existing dwellings will continue to provide for the housing needs of the community within a low-density residential environment.
- The proposed subdivision will not impact on other land uses that provide facilities or services to meet the day to day needs of residents.
- It is noted that no physical works are proposed under this development application, as such the subdivision of the site is unlikely to have an impact on the desirable elements of the existing streetscape and built form.
- The proposed development relates to the subdivision of an existing dual occupancy. Considering no alterations are proposed to the current built form, it is unlikely the development will arise any adverse amenity impacts on adjoining and surrounding residents.
- The proposed subdivision supports the individual ownership of each dwelling and may contribute positively to housing affordability in the wider area.
- The proposed development will not impact on small-scale business uses in existing commercial buildings.

Assessing officer's comment: The development is consistent with the objectives of the minimum lot size standard and the R2 zone.

In particular, the proposed development satisfies the desired future character of the area, in that it meets the requirements of the draft minimum lot sizes as per the Draft Planning Proposal and amendments to the Randwick LEP.

The development is considered to be in the public interest.

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

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

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

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

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

Variation of the minimum lot size development standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

#### Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the minimum subdivision lot size development standard of Clause 4.1.

#### 8. Development control plans and policies

##### 8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in the Discussion of Key Issues Section of the report.

#### 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	See discussion in Section 6 in relation to the Planning Proposal and draft Randwick LEP.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See the discussion in Key Issues section of the report below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<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 desired future character of the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 9.1. Discussion of key issues

### **Clause 2.1 (Minimum Lot Size and Frontage) of Part C1, RDCP 2013**

Clause 2.1 supplements the LEP provisions in relation to subdivision and aims to ensure that land subdivision respects the predominant subdivision and development pattern of the locality, and creates allotments which are adequate in width and configuration to deliver suitable building design and maintain the amenity of neighbouring properties.

Subclause 2.1(i) specifies a minimum frontage width for resultant lots within the R2 zone of 12m for the purpose of dwelling houses and semi-detached dwellings. The proposed subdivision would result in the existing development being re-defined as semi-detached dwellings. The proposed lots have frontage widths of 7.605m and 7.635m, resulting in a substantial non-compliance with the minimum 12m requirement.

As discussed under the Clause 4.6 assessment in Section 7.1 of the report, Council has endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone. Specifically, the draft Planning Proposal amends clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m<sup>2</sup> to 275m<sup>2</sup>, with the exception of land within a Heritage Conservation Area.

As such, the DCP controls relating to frontage width need to be considered within the context of Planning Proposal and amendment to the Randwick Local Environmental Plan 2012. As such, the frontage width is considered on a merit assessment against the objectives of the clause.

The proposed 7.605m and 7.635m lot frontages provide sufficient width in relation to the resultant semi-attached dwelling on each lot. In addition, the width is in keeping with the future desired design, pattern and amenity of the locality. As such, the non-compliance is considered acceptable.

## 10. Conclusion

That the application to Torrens Title Subdivision of a Dual Occupancy be approved (subject to conditions) for the following reasons:

1. While the proposed lot sizes do not comply with the minimum provisions in Clause 4.1 of the RLEP 2012, the proposal is consistent with the Council endorsed Planning Proposal and amendments to the Randwick LEP 2012 regarding minimum lot size requirements and the future character of the R2 zone.
2. Compliance with the minimum lot size is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that would warrant a variation to the development standard, based on the Council endorsed Planning Proposal and amendments to the Randwick LEP 2012. As such, the written request pursuant to Clause 4.6 of the RLEP 2012 to vary the minimum lot size standard pursuant to Clause 4.1 is considered to be well founded.
3. The proposed development is consistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.

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## Appendix 1: Referrals

### 1.1. Development Engineer

An application has been received for Torrens Title Subdivision of the constructed Dual Occupancy into 2 lots.

This report is based on the following plans and documentation:

- Draft Subdivision Plans by surveyor Sydney Surveyors;
- Statement of Environmental Effects by The Planning Hub

### General Comments

The above site was subject to a Dual Occupancy Approval - DA/229/2018 & CC/504/2019.

An Occupation Certificate has been issued for the Development, CC/504/2019 dated 28.05.2021.

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

### 1.0 The Proposal

This request is written in support of a development application (DA) at 20 Paterson Street, Matraville.

This Clause 4.6 Request relates to a variation proposed to the relevant Minimum Lot Size Control as prescribed by clause 4.1 of the Randwick Local Environmental Plan (LEP) 2012.

### 1.1 Relevant Case Law

Clause 4.6 of the Randwick Local Environmental Plan (LEP) 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*Further Clause 4.6(4) provides that:*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
4. *Brigham v Canterbury-Bankstown Council* [2018] NSWLEC 1406;
5. *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118; and
6. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156



LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although Wehbe concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The environmental planning grounds relied on in the written request under cl 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

## 1.2 Relevant Development Standard

The relevant development standard to which this objection relates to is Clause 4.1 - Minimum Lot Size. Clause 4.1 - Minimum Lot Size sets out the following:

- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

As show in **Figure 1**, the minimum lot size applying to the site is 400m<sup>2</sup>.

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**Comment:**

lot 1 is proposed to contain a lot area of 301.8m<sup>2</sup> which is a variation of 24.55% and Lot 2 is proposed to contain a lot area of 328.5m<sup>2</sup> which is a variation of 17.875% of the minimum 400m<sup>2</sup> prescribed in the Randwick LEP 2012.

**1.3 Is the Planning Control in Question a Development Standard?**

'Development Standards' are defined under Section 1.4(1) of the EP&A Act as follows:

*"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

*(a) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,..."*

**Comment:**

The Minimum Lot Size under Clause 4.1 of the Randwick LEP 2012 is clearly a development standard.

**2.0 The Contravention**

The proposal results in the following variation to Council's Minimum Lot Size Control as demonstrated in the table below:

Table 1: Variation to Council's Minimum Lot Size Control			
	Control	Proposed	Variation
<b>Minimum Lot Size</b>	400m <sup>2</sup>	Lot 1 – 301.8m <sup>2</sup> Lot 2 – 328.5m <sup>2</sup>	<p><b>Lot 1</b> - The proposed 301.8m<sup>2</sup> lot size result in a variation of 98.2m<sup>2</sup> (24.55%) from the required 400m<sup>2</sup></p> <p><b>Lot 2</b> - The proposed 328.5m<sup>2</sup> area lot size result in a variation of 71.5m<sup>2</sup> (17.875%) from the required 400m<sup>2</sup>.</p>

### 3.0 Justification of the Contravention

The Draft Randwick Comprehensive Planning Proposal has been prepared to update the Randwick Local Environmental Plan 2012. The planning proposal is currently at finalisation stage and Council Officers have advised that they are now in a position to determine a subdivision application that satisfies the minimum lot size development standards of the draft LEP.

The LEP Changes relevant to the Variation Request Letter includes changes to Clause 4.1, specifically to 'amend the minimum lot size in the R2 Low Residential zoned LGA-wide but excluding heritage conservation areas from 400 square metres to 275 square metres'.

The proposed lot sizes of 301.8m<sup>2</sup> (Lot 1) and 328.5m<sup>2</sup> (Lot 1) both comply with the minimum 275m<sup>2</sup> prescribed in the Draft LEP.

Furthermore, the following approved developments in proximity to the subject site contain consistent lot sizes and therefore Council has effectively abandoned the current lot size control for dual occupancies.

Table 2: Previously Approved Subdivision in Close Proximity to the Subject Site			
DA No & Address	Proposed	Comment	Approved
<b>DA/870/2018</b> <b>28-28A Windsor Street, Matraville</b>	Torrens title subdivision of existing dual occupancy	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>Minimum size of Lot 1 = 275.03m<sup>2</sup></li> <li>Minimum size of Lot 2 = 328.63m<sup>2</sup></li> </ul>	07 December 2021
<b>DA/880/2018</b> <b>12-12A Paterson Street Matraville</b>	Torrens title subdivision of existing dual occupancy	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>Area of Lot 100 = 262.4m<sup>2</sup></li> <li>Area of Lot 101 = 315.3m<sup>2</sup></li> </ul>	22 November 2016

**Table 2: Previously Approved Subdivision in Close Proximity to the Subject Site**

DA No & Address	Proposed	Comment	Approved
DA/29/2020 29-29A Windsor Street, Matraville.	Torrens title subdivision of a newly constructed dual occupancy into two separate lots	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>• Lot 1 = 382.31sqm</li> <li>• Lot 2 = 383.18sqm</li> </ul>	31 March 2020
DA/129/2020 3 Paterson Street MATRAVILLE NSW 2036	Torrens title subdivision of a dual occupancy into two allotments.	The development proposed 2 lots in the following configuration. <ul style="list-style-type: none"> <li>• Lot 1 = 294.3m2</li> <li>• Lot 2 = 328.1m2</li> </ul>	15 June 2020

There are no adverse impacts as a result of the proposed contravention. The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments).

The proposed subdivision is consistent to a number approved developments (refer to **Table 2**) in proximity to the site and no works are proposed to increase the building envelope that may impact on solar access to adjoining properties, or additional bulk and scale when viewed in the public domain.

### 3.1 Public Interest

Clause 4.6(4)(a)(ii) of the Randwick LEP 2012 requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development has been assessed against the objectives for the R2 Low Density Residential Zone. Despite the proposed variation to the minimum lot size prescribed in the development standard, the proposal is considered in the public interest as it satisfies the objectives of the zone and the objectives of the development standard and would also comply with the intend lot size changes which are considered to be imminent.

### 3.2 Consistency with R2 Low Density Residential Zone

The consistency of the proposal against the objectives of the R2 Low Density Residential Zone is outlined below.

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

The existing dwellings will continue to provide for the housing needs of the community within a low-density residential environment.

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

The proposed subdivision will not impact on other land uses that provide facilities or services to meet the day to day needs of residents.

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

It is noted that no physical works are proposed under this development application, as such the subdivision of the site is unlikely to have an impact on the desirable elements of the existing streetscape and built form.

- ***To protect the amenity of residents.***

The proposed development relates to the subdivision of an existing dual occupancy. Considering no alterations are proposed to the current built form, it is unlikely the development will arise any adverse amenity impacts on adjoining and surrounding residents.

- ***To encourage housing affordability.***

The proposed subdivision supports the individual ownership of each dwelling and may contribute positively to housing affordability in the wider area.

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

The proposed development will not impact on small-scale business uses in existing commercial buildings.

### 3.3 Consistency with Objectives of the Minimum Lot Size Development Standard

The consistency of the proposal against the objectives of 4.1 is outlined below.

- ***To minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,***

The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). It is noted that the existing built form will be retained and the proposed subdivision will not result in any amenity impacts on adjoining properties in terms for views, solar access, overshadowing and the like.

- ***To ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views***

The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). The subdivisions will not have an impact on natural or cultural features, including heritage items, and to retain special features such as trees and views.

- ***To ensure that lot sizes are able to accommodate development that is suitable for its purpose.***



The subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). The subject site as subdivided will continue to be suitable for a dual occupancy development.

#### 4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of Randwick LEP 2012 requires the departure from the development standard to be justified by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The following provides an assessment of the proposed variation against the relevant tests (tests 1 and 4) to demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. Of note an assessment against test 5 has not been undertaken as the zoning of the site is considered to be appropriate.

#### 4.1 The Objectives of The Development Standard Are Achieved Notwithstanding Noncompliance with The Standard

As detailed in **Section 3.3**, the development as proposed is consistent with the objectives of Clause 4.1 in that subdivision will not result in any adverse amenity impacts on adjoining properties in terms for views, solar access, overshadowing and the like. In addition, the subdivision supports the ongoing use of an dual occupancy development that has demonstrated to have no adverse impacts on any natural, cultural and special features within the site or in proximity.

Furthermore, the subdivision proposed under this DA seeks to formalise the manner in which the lots are currently used (as individual, separate dwellings on separate allotments). The subject site as subdivided will continue to be suitable for a dual occupancy development.

## 4.2 The Development Standard Has Been Abandoned by The Council

Clause 4.1 is considered to have been abandoned by Council. This is evident by the adoption of the Draft Randwick Comprehensive Planning Proposal which is currently at finalisation stage. Council Officers have advised that they are now in a position to determine a subdivision application that satisfies the minimum lot size development standards of the Draft LEP.

The LEP changes relevant to the variation request includes changes to 'the minimum lot size for all land zoned R2 LGA-wide but excluding heritage conservation areas from 400m<sup>2</sup> to 275m<sup>2</sup>. The proposed lot sizes of 301.8m<sup>2</sup> (Lot 1) and 328.5m<sup>2</sup> (Lot 1) comply with the minimum 275m<sup>2</sup> prescribed in the Draft LEP.

It is therefore clear that there is intent from Council to amend existing provisions to the minimum lot size development standard, therefore clearly demonstrating that Council have abandoned the minimum lot size of 400m<sup>2</sup>. This is also reflective of a number of approvals issued by Council which contravene the minimum lot sizes for a dual occupancy.

Therefore, it is considered that compliance is unreasonable and unnecessary in the circumstances of the case.

## 5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

Clause 4.6(3)(b) of the Randwick LEP 2012 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

It is our opinion that there are sufficient environmental planning grounds to justify contravening the minimum lot size standard in this instance. These are as follows:

### Comment

It is our opinion that there are sufficient environmental planning grounds to justify contravening the floor space ratio standard in this instance. These are as follows:

- The proposed subdivision is consistent with the objectives of the zone and relevant controls of Clause 4.1.
- The proposal does not result in any adverse impact from adjoining properties or streetscape.
- The proposed lot sizes are consistent to a number of approved subdivisions in proximity to the site and therefore development standard has been abandoned by Council.
- The Randwick Comprehensive Planning Proposal seeks to amend the lot size applicable to Dual Occupancy and the development as proposed would comply with the new envisaged controls.
- The objectives of the LEP are achieved in this instance.



## 6.0 Conclusion

The proposed contravention to the minimum 400m<sup>2</sup> lot size is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal represents an individual circumstance in which Clause 4.6 was intended and to be available to set aside compliance with unreasonable or unnecessary development standards.
- No works are proposed to increase the building envelope therefore there is no impact on solar access to adjoining properties, or additional bulk and scale when viewed in the public domain.
- The proposed development results in the retention of the existing buildings.
- The proposed development is consistent with the objectives of Clause 4.1 of the Randwick LEP and therefore is in the public interest pursuant to clause 4.6(4).

In view of the above, it is considered that this written request has adequately addressed the matters required by Clause 4.6(3) of the Randwick LEP 2012 and Council's support to contravene the relevant minimum lot size applicable under Clause 4.1 is therefore sought.

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

**File Reference:** DA/280/2022

## Development Consent Conditions



D66/22

<b>Folder / DA No:</b>	DA/280/2022
<b>Property:</b>	20 Paterson Street, MATRAVILLE NSW 2036
<b>Proposal:</b>	Torrens title subdivision of an approved attached dual occupancy development into two allotments
<b>Recommendation:</b>	Approval

### GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations 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>
Ref. 18125/2A	Sydney Surveyors	6 April 2022

### REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifying Authority' issuing a 'Subdivision certificate'.

These conditions have been applied to satisfy the provisions of Council's environmental plans, policies and codes for subdivision works.

#### Sydney Water

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

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

A Section 73 Compliance Certificate must be completed before a subdivision certificate will be issued.

NOTE: The Section 73 certificate issued upon the completion of the dwellings will not be acceptable to comply with this condition. A separate S73 compliance certificate that specifically refers to the subdivision of the site into two lots must be provided.

#### **Easements**

3. The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres.

#### **Public Utilities**

4. The applicant must meet the full cost for telecommunication companies, Jemena, Ausgrid and Sydney Water to adjust/relocate their services as required. This may include (but not necessarily be limited to) relocating/installing new service lines and providing new meters. The applicant must make the necessary arrangements with the service authorities.

Should compliance with this condition require works that are not exempt development, the necessary approvals must be obtained prior to any works being undertaken.

#### **Road / Asset Opening Permit**

5. A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a subdivision certificate.

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

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

6. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

An application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of a subdivision certificate.

Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.

#### **Restriction and Positive Covenant**

7. A certificate of title providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition 51 of

DA/229/2018) shall be provided to Council prior to the issuing of a subdivision certificate.

If the restriction and positive covenant have **not** yet been registered, a "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of subdivision for this property, to ensure that the onsite detention system is maintained and that no works which could affect the design function of the detention system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction as to user" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.

**Subdivision Certificate**

8. A formal application for a subdivision certificate is required to be submitted to and approved by the Council and all conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.



## Development Application Report No. D67/22

**Subject:** 34 Mawson Parade, Chifley (DA/622/2021)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to existing mixed-use development including alterations to existing dwelling by conversion of car space to a rumpus room and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works (variation to FSR of the RLEP 2012).
<b>Ward:</b>	South Ward
<b>Applicant:</b>	Archispec
<b>Owner:</b>	Mr Theo
<b>Cost of works:</b>	\$175,186.00
<b>Reason for referral:</b>	Development that contravenes a development standard by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/622/2021 for alterations and additions to existing mixed-use development including alterations to existing dwelling by conversion of car space to a rumpus room and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works at No. 34 Mawson Parade, Chifley, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  Draft RLPP Conditions of Consent - DA/622/2021 - 34 Mawson Parade, Chifley

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## 1. Executive summary

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

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

The proposal seeks development consent for alterations and additions to existing mixed-use development including alterations to existing dwelling by conversion of car space to a rumpus room and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works.

The key issues associated with the proposal relate to an increase to the Gross Floor Area and subsequent variation to the maximum Floor Space Ratio (FSR) permitted. Assessment of the application has found that, in this instance, the variation to the FSR standard is acceptable on merit as the proposal is consistent with the objectives of the standard, the B1 zone and is compatible with the bulk and scale of other developments within the centre.

The proposal is recommended for approval subject to non-standard conditions of consent which require additional privacy measures to the rear balcony.



## 2. Site Description and Locality

The subject site is known as 34 Mawson Parade, Chifley and has a legal description of Lot 147 in Deposited Plan 36561. The site is rectangular in shape, and has a total area of 170.7m<sup>2</sup>. The site is located on the western side of Mawson Parade between Melba Avenue and Mawson Lane. Vehicular access is currently gained via a laneway accessed at the rear of the site. Pedestrian access is also gained from the rear 5.18m boundary fronting the laneway and via the 5.18m wide frontage to Mawson Parade. The site experiences a fall of 2.27m from the eastern front boundary at Mawson Parade down towards the rear western boundary, with a slope of approximately 6.79%.

The site is zoned B1 Neighbourhood Centre and is currently occupied by a mixed-use development comprising a dwelling and business premises. The property is surrounded by shop-top housing and mixed-use developments to the north and south. Adjacent to the site on the eastern side of Mawson Parade are a series of dwelling houses and semi-detached dwellings. Adjacent to the site to the west is a housing development for older people of people with a disability. Residential developments are located within the wider area to the north, east and west. Dr Walters Park is located to the south of the neighbourhood centre zone.

### Site Photos



Figure 1 – Mawson Lane frontage, existing building identified in green

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Figure 2 – Mawson Parade frontage, existing building identified in green (Source: Google).

### 3. Relevant history

#### Past applications

The subject site has been used as a mixed-use development comprising a dwelling and commercial/business use for an extended period of time. A search of Council's records revealed the following relevant and/or recent applications for the site:

- DA/223/1976 – Use of the shop premises as a doctors surgery, approved by Council in 28 January 1977;
- DA/51/1985 – Use of the vacant office as a second hand goods shop, approved by Council on 22 March 1985;
- DA/350/1989 – Internal alterations and change of use of the existing vacant shop to commercial, approved by Council on 11 December 1989;
- DA/203/1991 – change of use of the existing vacant shop to fry bread prior to distribution to restaurants, approved by Council on 24 June 1991.

A search of Council's records did not reveal a copy of the original development consent of the building, including the residence. However, in development applications DA/223/1976 and DA/350/1989 reference is made to the use of the rear of the building as a residential dwelling, and the site plans in relation to these applications identify the existing residence at the rear of the site, behind the shop.

#### Subject application

The subject development application was lodged with Council on 08 October 2021. The application was referred to Council's Development Engineer and Building Regulatory Unit for comment and/or recommendation.

A request for additional information was sent to the Applicant on 19 July 2022 which raised concerns regarding non-compliance with FSR, the rear setback of the upper level and the number of storeys at the rear, and access to parking which was through Bedroom 4. Amended plans were submitted and accepted by Council on 21 July 2022. The amendments involved an increased rear setback and reconfiguration of the Lower Ground Floor level.

#### 4. Proposal

The proposal seeks development consent for alterations and additions to existing mixed-use development including alterations to existing dwelling by conversion of car space to a rumpus room and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works.

Specifically, the proposal seeks consent for the following works:

- Lower Ground Floor level
  - Enclosure of the existing car parking space and change of use to a rumpus room; and
  - New external store room.
- Ground Floor level
  - Extension to the north for a length of 4.1m;
  - Internal reconfiguration; and
  - New external access from Mawson Parade.
- A new First Floor level comprising open-plan Living/Dining/Kitchen area, one (1) Bathroom, one Bedroom with walk-in robe and en-suite, and two (2) balconies to the east and west.

#### 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. No submissions were received during the course of the assessment of the application.

The amended plans submitted resulted in a lesser impact due to the increased rear setback and therefore renotification of the application was not considered necessary in this instance.

#### 6. Relevant Environment Planning Instruments

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

The site is zoned B1 Neighbourhood Centre under Randwick Local Environmental Plan 2012. The proposal is considered to be permissible pursuant to clause 6.14 of RLEP 2012. See further discussion regarding permissibility below.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form provides a small-scale business use that serves the needs of the community, with the residential component well integrated with the primary business function of the zone. Furthermore, it is considered that the proposal shall not result in any unreasonable amenity impacts upon the adjoining and nearby residential zones.

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)	1.1	1.326:1 or 226.458m <sup>2</sup> of GFA.  Existing FSR = 0.73:1 or 125.31m <sup>2</sup>  It should be noted that the existing dwelling on site is very modest, being a total area of 63.43m <sup>2</sup> .	No <i>See clause 4.6 assessment below.</i>

CI 4.3: Building height (max)	9.5m	9.2m (as measured from below the existing lower ground floor slab)	Yes
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#### 6.1.1. Clause 4.6 - Exceptions to development standards

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

#### 6.1.2. Clause 6.14 - Certain residential accommodation in business zones

The existing building on site comprises a mixed-use development containing one (1) dwelling and one (1) commercial premises, being a vacant shop.

The existing floor plan of the development includes portions of the dwelling on both the Lower Ground Floor and Ground Floor levels, with the Shop located at Ground Floor level. As the existing dwelling is located at the Lower Ground Floor level of the building, the development does not meet the definition of “shop top housing” pursuant to the Dictionary within RLEP 2012 which is defined as follows:

**“shop top housing** means one or more dwellings located above ground floor retail premises or business premises.”

As such, the use of the development would be appropriately defined as a mixed-use development with the dwelling portion defined as a “dwelling house”, being “a building containing only one dwelling”.

The provisions of clause 6.14 permit the continued use of residential development, being an existing dwelling house or residential flat building, within the B1 zone where the building existed prior to the commencement of RLEP 2012 and was designed for the purpose of a dwelling house.

A search of Council’s records identifies that the existing building was designed and constructed for the purpose of a shop and a dwelling, with approvals identifying the existing dwelling dating back to 1976. The building has maintained a use as a dwelling and shop for an extended period of time and this use remains.

Pursuant to clause 6.14(3)(b) development consent can be provided if the consent authority is satisfied that:

- (i) *the development will not detrimentally impact on the desired future character of the locality, and*
- (ii) *the development will result in satisfactory residential amenity for its residents, and*
- (iii) *the degree of modification to the footprint and facade of the building is minor.*

The proposed works shall allow the site to continue to be utilised as a mixed-use development, providing additional accommodation needs and improving amenity for the occupants of the existing dwelling. The resultant built form is consistent with the objectives of the relevant controls and standards within the RLEP 2012 and RDCP 2013, and is compatible with the scale of surrounding developments within the neighbourhood centre and as such the proposal is not considered to detrimentally impact upon the desired future character of the locality.

The proposed works are largely contained within the existing building footprint, with the main addition at the First Floor level. The existing building provides for a tall parapet at the Mawson Parade frontage which shall be extended to provide a second storey. The proposed upper level addition is sited behind the adjoining development at 36 Mawson Parade which shall screen the proposed development, and the development shall be consistent with the height of adjoining buildings and therefore the main change to the façade shall be to the northern elevation with the First Floor level visible as viewed from the north. However, in the context of the overall built form, the visual presentation of the proposal shall not dramatically alter from that which exists, particularly given the setbacks to the north and the west for the upper level. As such, the degree of modification to the footprint and façade can be considered minor. In view of the above, the proposed



development is considered to be consistent with the provisions of clause 6.14 and is permissible with consent.

## 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Existing	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	1:1 or 170.7m <sup>2</sup>	0.73:1 or 125.31m <sup>2</sup>	1.326:1 or 226.458m <sup>2</sup>	55.758m <sup>2</sup>	32.6%

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

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

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term ‘sufficient’ did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

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

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

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

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

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

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

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

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

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



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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the two (2) storey presentation to Mawson Parade shall be consistent with the existing character, there shall be no change to the deep soil and site coverage of the site, and the proposed side and rear setbacks are consistent with the DCP and the neighbouring developments.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal provides large open-plan areas to provide opportunity for cross-ventilation, and the upgrading of the premises shall improve the standard of the residential accommodation.

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed second storey shall not adversely impact the streetscape of Mawson Parade with regards to visual bulk and shall contribute to a more cohesive streetscape. Due to the absence of windows on the adjoining properties there shall be no adverse privacy impacts and the proposed balconies shall provide privacy screening. Furthermore, the proposal shall be of similar height to adjoining buildings and it is not anticipated that any adverse view loss impacts shall occur. Due to the development being sited behind the alignment of No. 36 to the south, there shall be no adverse shadowing impacts.

Assessing officer's comment:

The proposed development shall have a maximum height of RL41.80 at the rear of the site, with the front portion providing a ridge height of RL40.62. The developments as viewed from Mawson Lane to the west vary being two and three storeys in nature. However, due to the topography of the subject site, the Lower Ground Floor level is sited partially below ground, and therefore the proposed upper level shall still be comparable in height to the adjoining and existing developments within the neighbourhood centre block. In this regard, the adjoining developments to the immediate north and south provide heights of RL41.67 and RL41.61, being 130mm and 190mm lower than the proposed development. It is also noted that the newer

development to the far north at 26 Mawson Parade has a height of RL42.65 to the first floor level and has a development consent for an upper level addition with a maximum height of RL45.45. The proposal shall also be consistent with the height of the two (2) storey frontages along Mawson Parade. As such, the proposed first floor level shall not be out of character with the existing and desired future streetscape as viewed from both Mawson Parade and Mawson Lane.

The non-compliant FSR can be attributed to a combination of the change of use of the garage at the Lower Ground Floor level and the additional storage, and the new First Floor level. However, due to the narrow width and constraints of the site the proposed rooms within the dwelling, with particular regards to the First Floor level, are not considered to be excessive. The overall bulk and scale, and resultant FSR is also comparable to the other developments within the neighbourhood centre block, with particular regards to the most recent development consent granted for 26 Mawson Parade which supported a FSR variation of 1.26:1. Furthermore, as discussed under the key issues section, the proposed rear setback is supported, and the proposed upper level provides good articulation of the rear façade. It is considered that the proposed development shall not result in any unreasonable impacts upon the adjoining properties with regards to visual bulk, solar access, privacy or views.

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

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

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

- *The proposed development is consistent with the objectives of the zone and the floor space ratio development standard.*
- *The large majority of shop-top housing buildings on Mawson Parade have a 2 storey street frontage, with which the proposal will appear more consistent and cohesive.*
- *The proposed second storey will not increase the overall perceived bulk of the shop-top housing buildings along Mawson Parade.*
- *The proposed development complies with the maximum building height development standard, and the site coverage, landscaped area, and setback provisions.*
- *The proposed development will remediate the existing dilapidated structure which poses safety and security issues, and significantly detracts from the appearance of the streetscape.*
- *The standard of residential accommodation and privacy between residents and customers will be vastly improved.*
- *The proposal encourages environmental sustainability through making use of natural lighting and ventilation.*
- *The proposal is well articulated and will improve the environmental and energy-related aspects of the property.*
- *The property will be better integrated with the scale and character of neighbouring buildings and the overall streetscape.*
- *There will not be any loss of visual privacy or opportunities for overlooking between the subject site and its neighbours due to window locations and privacy walls.*
- *There will be a negligible impact on views experienced by neighbouring buildings due to the existing building heights of No. 32 Mawson Parade and No. 36 Mawson Parade, which the proposal will not significantly exceed.*
- *There will be a negligible impact upon the solar amenity received by the neighbouring properties due to the orientation of the buildings.*
- *The proposed non-compliance with the floor space ratio development standard would not raise any matter of significance for State or Regional environmental planning.*

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

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

To determine whether the proposal will be in the public interest, consideration is given to the objectives of the Floor Space Ratio standard and B1 zone.

As discussed in Section 6.1 of the report, the proposal is considered to be consistent with the objectives of the B1 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.4 Floor Space Ratio, subject to the recommendations within the report. Therefore the development will be in the public interest.

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

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

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

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

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

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

**Conclusion**

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

**8. Development control plans and policies**

**8.1. Randwick Comprehensive DCP 2013**

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

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

**9. Environmental Assessment**

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.

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

## 9.1. Discussion of key issues

### Floor Space Ratio

The proposed development seeks to undertake alterations and additions to the existing development to improve the amenity and functionality of the dwelling while providing additional bedroom and bathroom facilities to the meet the needs of the occupants. Due to the size of the site, being 170.7m<sup>2</sup>, and the mixed-use nature of the development comprising a shop and dwelling, the proposal results in a variation to the FSR development standard. The proposed development shall have a Floor Space Ratio of 1.31:1 or a GFA of 225.1m<sup>2</sup>. It should be noted that there was a discrepancy between Council's calculations and the Applicants, with some areas of GFA omitted. As such, Council calculates the FSR to be 1.326:1.

The Floor Space Ratio Map pursuant to clause 4.4(2) identifies that the proposed maximum FSR for the development is 1:1 and the proposed development is numerically non-compliant with the development standard. As such, quantitatively, the Applicant seeks to vary the development standard by approximately 31% and a Clause 4.6 exception to vary the development standard is required. See assessment of Clause 4.6 in relation to the contravention of the maximum FSR under Section 3 of the report.



## Rear Setback

Concerns were raised with the original proposal regarding the rear setback which was in alignment with the adjoining property at 36 Mawson Parade. The controls relating to the proposed development under Part D6 of RDCP (Neighbourhood Centres) do not specify a numerical rear setback for the subject site due to its frontage to the laneway. However, No. 36 is an anomaly within the streetscape with all the other buildings providing a greater rear setback. Furthermore, the building at No. 36 was approved a significant amount of time ago (in the 1970s) prior to the current planning controls, and is visually dominant and jarring as viewed from Mawson Lane, and this should not be repeated.

With regards to the rear setback, it is noted that the existing properties could be considered to have an established rear setback for the upper levels (with the exception of 36) which is identified in red below:



Figure 3 – rear setbacks of existing developments, predominant upper level setback line in red.

The proposed development was amended in response to Council's concerns and adopts a rear setback consistent with the red line identified above which minimises the visual impact of the upper level and ensures consistency in the streetscape, particularly noting that the proposed upper level is comparable in height to the upper levels of the neighbouring buildings, and the three (3) storey nature of the proposed development is due to the siting of the lower ground floor level and topography of the site which slopes towards the rear. Furthermore, due to the increased setback the proposal shall not result in any unreasonable solar access impacts upon the southern properties.

## **Safety and Security**

As a result of the increased rear setback, the owner of the subject property raised concerns regarding safety and security to the First Floor level via the Ground Floor level rear roof area which shall be located directly adjacent to the access stairs of No. 36 Mawson Parade and would potentially allow persons to access the First Floor level via the roof and balcony. As such, a request was made for security measures such as screening to be permitted along the southern roof edge, similar to the existing screen as can be seen below:



Figure 4 – Existing security screening between the subject site and adjoining stairs.

The request is not considered unreasonable in the circumstances and it is considered that a formal screen attached to the roof and integrated with the proposed development would result in a better streetscape outcome than currently exists. The proposed screen would only be required to extend to a height of 1.8m above the stair landing level adjoining the site, and therefore would not be visually obtrusive as viewed from the public domain. As such a condition of consent is recommended which permits a screen along the southern side of the Ground Floor level rear roof to a height of 1.8m above the adjoining stairs.

## **10. Conclusion**

That the application for alterations and additions to existing mixed-use development including alterations to existing dwelling by conversion of car port to a rumpus room and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the B1 zone in that the proposed activity and built form provides a small-scale business use that serves the needs of the community, with the residential component well integrated with the primary business function of the zone, and the proposal shall not result in any unreasonable amenity impacts upon the adjoining and nearby residential zones.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.



## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Development Engineer

The application was referred to Council's Development Engineer who provided the following comments and/or recommendations:

*An application has been received for alterations and additions to the existing mixed-use development including alterations to existing dwelling by conversion of car port to a bedroom and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works (variation to FSR of the RLEP 2012).at the above site.*

*This report is based on the following plans and documentation:*

- *Architectural Plans by Archi Spectrum dated 7<sup>th</sup> October 2021*
- *Statement of Environmental Effects by Archi Spectrum dated July 2021*
- *Detail & Level Survey dated 29<sup>th</sup> July 2020.*

#### **General Comments**

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

#### **Parking Comments**

*Parking demand for the existing and proposed development has been calculated adopting the following relevant parking rates specified in Part B7, Sec 3.2, Table 1 of Councils DCP;*

- *1.2 spaces per 2-bedroom unit*
- *1.5 spaces per 3-bedroom unit or greater*
- *1 space per 40m<sup>2</sup> GFA for commercial*

#### *Current Situation*

*The site currently comprises of a shop with a GFA of approximately 62m<sup>2</sup> (as measured by Development Engineer) with a 2-bedroom unit attached. Under the DCP parking controls the site would therefore produce the following parking demand*

<i>Existing parking demand</i>	<i>= 1.2 (2 bedroom unit) + 62/40 (commercial)</i>
	<i>= 2.75</i>
	<i>= say 3 spaces</i>

*It is noted however the existing 'carport' is not compliant with AS 2890.1 in terms of minimum length for carspaces being only 4.30 m in depth (5.4m required) however the hardstand area in front of the carport is also available for parking allowing 1 space to be provided only. Hence there is an existing parking shortfall of about 2 spaces*

*There is an argument that the shop could be considered ancillary to the unit as it is accessible through the unit and so likely produces very little parking demand on its own*

*hence the existing parking demand may be lower than the DCP suggests. This will not significantly impact Development Engineering's assessment however.*

*On-Street (rear to kerb) parking is available along Mawson Parade (including the site frontage) between Mawson Lane & Melba Avenue. This is shared amongst the group of shops at 26 - 40 Mawson Parade and amounts to approximately 11 spaces. It is understood that most of these shops have now been converted to residences and are using the Mawson Parade spaces as their primary parking space although a majority of them also have access to off-street parking at the rear from Mawson Lane.*

*The proposed development will be separating the shop from the unit and enlarging the unit by an additional storey resulting in a 4-bedroom dwelling. Due to the introduction of the stairs for the 4-bedroom unit at the front, the GFA of the shop will reduce to approx. 55m2 (as measured by Development Engineer)*

Proposed parking demand = 1.5 (4 bedroom unit) + 55/40 (commercial)  
= 2.88  
= say 3 spaces

*A single carspace will continue to be provided which presumably will allocated to the unit as it will no longer be accessible from the shop. The existing shortfall of 2 spaces will remain unchanged.*

*There is generally a plentiful supply of on-street parking in the locality although the rear to kerb parking bays immediately in front of the shops are utilised as evidenced from site inspection on 6/07/2022 (see below)*

*Mawson Parade – South view*



*Even if accepting that the existing parking demand may be lower than the 3 spaces predicted by the DCP, the proposed development is not expected to create any unacceptable impacts with the availability of on-street parking in the locality. Surrounding residences generally all have access to off-street parking and there is a plentiful supply of on-street parking.*

**Flooding Comments**

*The Council commissioned South LGA Flood study predicts a minor overland flow path in Mawson Lane at the rear of the site with flood depths of less than 50mm predicted for the 1% AEP (1 in 100yr) flood. The floor level of the new bedroom 4 is over 0.8m above the gutter level in Mawson Lane and so is well protected from any flooding. No flood controls therefore apply, and no objections are raised from a flooding perspective.*

**Drainage Comments**

*Stormwater runoff from the (redeveloped portion) site shall be discharged to the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system).*

**Undergrounding of power lines to site**

*At the ordinary Council meeting on the 27<sup>th</sup> May 2014 it was resolved that;*

*Should a mains power distribution pole be located on the same side of the street and within 15m of the development site, the applicant must meet the full cost for Ausgrid to relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground UGOH connection.*

*The subject site **is not** located within 15m of a power pole on the same side of the street hence the above clause **is not** applicable.*

**Waste Management Comments**

*The Waste management plans shall not be approved as part of this development consent as it has not determined any waste requirements for the commercial tenancy. An amended Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development (commercial & residential), is required to be submitted to and approved by Council's Director of City Planning.*

**Landscape Comments**

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

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

LEP CLAUSE 4.6 VARIATION  
34 Mawson Parade, Chifley

ISSUE B  
October 2022

### 1.0 INTRODUCTION

This Clause 4.6 Variation has been prepared to accompany a Development Application for alterations and additions including the construction of a second storey within an existing shop-top housing development at No. 34 Mawson Parade, Chifley.

The subject land is zoned B1 Neighbourhood Centre under the Randwick Local Environmental Plan 2012.

The purpose of this objection is to justify the contravention of the Floor Space Ratio development standard by demonstrating the following:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

### 2.0 DEVELOPMENT STANDARD TO BE VARIED

The environmental planning instrument for which exception is sought is the Randwick Local Environmental Plan 2012:

**Clause 4.4 Floor space ratio**, which states the following:

- (1) The objectives of this clause are as follows—
  - (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
  - (b) to ensure that buildings are well articulated and respond to environmental and energy needs,
  - (c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
  - (d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—
  - (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or
  - (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or
  - (c) if the lot is more than 600 square metres—0.6:1.
- (2B) Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.

The controls of Clause 4.4 are considered to be development standards as defined in the Environmental Planning and Assessment Act, 1979.

### 3.0 THE DEVELOPMENT PROPOSAL

#### 3.1 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

##### Part 4 Principal development standards Clause 4.4 Floor space ratio

A maximum floor space ratio of 1:1 is permitted. The proposed second storey will result in a floor space ratio of 1.326:1, which equates to a 32.6% variation to Clause 4.4 of the Randwick Local Environmental Plan 2012.

The proposed gross floor area comprises of:

Basement floor	44.09m <sup>2</sup>
Ground floor	102.2m <sup>2</sup>
First floor	76.7m <sup>2</sup>
Total	226.458m <sup>2</sup>

This statement will demonstrate that contravention of the floor space ratio development standard is justified because compliance with the development standard is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify contravening the development standard.

### 4.0 JUSTIFICATION

#### 4.1 Clause 4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (The Wehbe Case), Chief Judge of the LEC provided five ways in which it may be demonstrated that compliance with a development standard is unreasonable or unnecessary. These include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone*

The first justification is relevant to the proposed development and has been addressed below.



**4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The development standard to which this objection relates is Clause 4.4 Floor space ratio. The objectives of Clause 4.4 are:

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

Each of these objectives have been addressed below.

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

This application primarily proposes the construction of a second storey within the existing shop-top housing building, resulting in a 2 storey frontage to Mawson Parade.

Currently, 62.5% of the shop-top housing buildings in the B1 Neighbourhood Centre zone on Mawson Parade have a 2 storey street frontage. Together with this application, this figure will eventually result in at least 75% of the shop-top housing buildings on Mawson Parade having a 2 storey street frontage.

Furthermore, the proposal is situated well under the building height limit prescribed in Clause 4.3 of the Randwick LEP 2012 when viewed from Mawson Parade, being 1.79 metres under. This will result in a size and scale which is clearly compatible with the surrounding buildings on Mawson Parade.

There will not be any increase to the existing building footprint, as there are no changes proposed to the existing landscaped areas and site coverage, where the subject site will retain 15.7% deep soil landscaping and 74.5% site coverage. These figures are consistent with the neighbouring shop-top housing buildings on Mawson Parade.

The proposed side and rear setbacks are also consistent with the provisions outlined in the Randwick DCP 2013, where the proposal will have a larger side setback than its neighbours, and the rear of the second storey will be directly in-line with No. 36 Mawson Parade.

As a result of the abovementioned figures and compliances, the proposed size and scale of the development is compatible with the desired future character of the shop-top housing developments on Mawson Parade.

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

Upon determination of this application, the subject site will be restored of any dilapidation, potential privacy issues for residents will be alleviated, and the standard of residential accommodation will be greatly improved.



The ground floor shop will no longer have any access to the residence, as separate entries specifically each for the shop and residence have been proposed.

As the subject site contains an attached building, natural ventilation can be difficult to achieve. However, this application proposes a larger, open-plan primary living area on the new floor, which will provide the opportunity for far more effective cross-ventilation, as operable glazing will be able to be located to the east and west facades without any obstructions, such as the ground floor shop.

The BASIX Certificate prepared by Greenworld Architectural Drafting further demonstrates that the proposed development achieves the minimum targets of the Building Sustainability Index, and therefore responds appropriately to environmental and energy needs.

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

The subject site is not located within, nor in the vicinity of any heritage items or conservation areas. However, the proposed second storey will result in a development which is more compatible with the scale and character of the other shop-top housing buildings on Mawson Parade.

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

As discussed under the response to Objective (a), 62.5% of the shop-top housing buildings in the B1 Neighbourhood Centre zone on Mawson Parade currently have a 2 storey street frontage. The proposed second storey will not adversely impact Mawson Parade in terms of visual bulk, but rather will contribute to a more cohesive streetscape, resulting in at least 75% of the shop-top housing buildings on Mawson Parade having a 2 storey street frontage.

While this application proposes windows on the north elevation, there will not be any loss of visual privacy or any opportunity for overlooking as there are no windows located on the south elevation of No. 32 Mawson Road, nor the north elevation of No. 36 Mawson Road. As can be seen on the architectural plans prepared by Archispectrum, the only glazing on neighbouring buildings in the vicinity of the subject site are to the rear of the properties on the west elevation.

Furthermore, the proposed front balcony will contain 3 metre high solid privacy walls on either side to prevent overlooking, and the proposed rear balcony will similarly have a solid privacy wall measuring 1.5 metres in height to the south where there is a nil setback from the boundary shared with No. 36 Mawson Parade, and a regular glass balustrade to the north where there is a 1.28 metre setback from the boundary shared with No. 32 Mawson Parade. A similar design to the proposed rear balcony can be seen to the rear of No. 36 Mawson Parade, along Mawson Lane.

As mentioned above, there are no windows on the south elevation of No. 32 Mawson Road, nor the north elevation of No. 36 Mawson Road which may be directly impacted by the proposed second storey regarding view losses.

Considering the subject site will result in a building with a similar height to its adjoining neighbours, there will not be any further view loss experienced by other shop-top housing buildings along Mawson Parade.

As can be seen in the shadow diagrams prepared by Archispectrum, there will be a negligible impact upon the solar amenity received by the neighbouring properties as a result of this application, due to the orientation of the buildings.

#### 4.2 Clause 4.6 (3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

The following environmental planning grounds are given to justify the contravention of the floor space ratio development standard:

- The proposed development is consistent with the objectives of the zone and the floor space ratio development standard.
- The large majority of shop-top housing buildings on Mawson Parade have a 2 storey street frontage, with which the proposal will appear more consistent and cohesive.
- The proposed second storey will not increase the overall perceived bulk of the shop-top housing buildings along Mawson Parade.
- The proposed development complies with the maximum building height development standard, and the site coverage, landscaped area, and setback provisions.
- The proposed development will remediate the existing dilapidated structure which poses safety and security issues, and significantly detracts from the appearance of the streetscape.
- The standard of residential accommodation and privacy between residents and customers will be vastly improved.
- The proposal encourages environmental sustainability through making use of natural lighting and ventilation.
- The proposal is well articulated and will improve the environmental and energy-related aspects of the property.
- The property will be better integrated with the scale and character of neighbouring buildings and the overall streetscape.
- There will not be any loss of visual privacy or opportunities for overlooking between the subject site and its neighbours due to window locations and privacy walls.
- There will be a negligible impact on views experienced by neighbouring buildings due to the existing building heights of No. 32 Mawson Parade and No. 36 Mawson Parade, which the proposal will not significantly exceed.
- There will be a negligible impact upon the solar amenity received by the neighbouring properties due to the orientation of the buildings.
- The proposed non-compliance with the floor space ratio development standard would not raise any matter of significance for State or Regional environmental planning.

It is considered that the objectives of Clause 4.4 within the Randwick Local Environmental Plan 2012 are achieved in this instance as the proposal results in the provision of a higher standard of residential accommodation and a desirable built form which is cohesive with its neighbours.

Strict compliance with the floor space ratio development standard would require the deletion of internal living areas or bedrooms, which would ultimately result in poor residential amenity. Considering the size and scale of neighbouring buildings, the proposed second storey and its variation to the permitted floor space ratio is appropriate.

**4.3 Clause 4.6 (4)(a)(ii) The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the zone**

The achieved objectives of Clause 4.4 have been addressed above.

The subject site is zoned B1 Neighbourhood Centre under the Randwick Local Environmental Plan 2012. The objectives of the zone are:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.

The proposal is consistent with the objectives of Zone B1. Specifically, the proposed development maintains its small-scale commercial use on the ground floor, which serves the needs of residents and the surrounding community.

The proposed second storey will enable a higher standard of residential accommodation which is well-integrated with the ground floor shop, and supports the primary business function of the zone whilst maintaining privacy.

As discussed above, the proposed development is not considered to adversely impact neighbouring buildings due to the size and scale of existing buildings, but rather contribute to a more cohesive streetscape. The proposed privacy measures will protect the amenity of nearby residents and residential zones.

## 5.0 CONCLUSION

As demonstrated throughout this objection to Clause 4.4 Floor Space Ratio of the Randwick Local Environmental Plan 2012, it is evident that:

- The applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the standard, and;
- The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

LEP CLAUSE 4.6 VARIATION  
34 Mawson Parade, Chifley

ISSUE B  
October 2022

It is considered that this written request has adequately addressed the matters required by Clause 4.6 (3) and (4)(a)(ii) of the Randwick Local Environmental Plan 2012, and notwithstanding the numerical non-compliance with the floor space ratio development standard, Council is requested to review the application favourably and grant the development consent.

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### Appendix 3: DCP Compliance Table

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

Council's Engineer has not raised any concerns with regards to traffic and parking. As such, the proposal is satisfactory with Section B7 of the RDCP.

#### 3.2 Section D6: Neighbourhood Centre

DCP Clause	Control	Proposal	Compliance						
2.3	Building Heights								
	<p>i) In neighbourhood centres with a 9.5m maximum height limit, development must not exceed 2 storeys in height (with the exception of habitable roof space/partial floor, which must be setback so as not to be visible from the street or incorporated into the roof design to have the appearance of a roof rather than an additional storey).</p> <p>iii) The minimum floor to ceiling height for a floor must comply with the following table:</p> <table><tr><td>Floor</td><td>Minimum floor to ceiling height</td></tr><tr><td>Ground Floor</td><td>3.3m</td></tr><tr><td>Upper Floors</td><td>2.7m</td></tr></table> <p>iv) Demonstrate the suitability of an alternative number of storeys and/or floor to ceiling heights having regard to:</p> <ul style="list-style-type: none"><li>- existing predominant storeys and/or floor to ceiling heights within the centre</li><li>- character of the street.</li></ul>	Floor	Minimum floor to ceiling height	Ground Floor	3.3m	Upper Floors	2.7m	<p>The proposal complies with the 9.5m height limit and the minimum floor to ceiling heights.</p> <p>Furthermore while the proposal shall be three storeys at the rear, the overall height shall be comparable with other existing developments within the Centre and therefore shall not be out of character with the street or laneway.</p>	Yes
Floor	Minimum floor to ceiling height								
Ground Floor	3.3m								
Upper Floors	2.7m								
3	Building Design								
3.1	Facades								
	<p>i) Where a development has two street frontages, each façade treatment must respond to the buildings in those streets.</p> <p>ii) Include shopfronts on side street frontages of corner sites to enhance the commercial potential of the space and minimise blank walls to the streetfront.</p> <p>iii) Facades should display proportions and detailing which respect the prevailing building facades across the centre (i.e. designing fine grain shop fronts, where the existing subdivision is fine grain).</p> <p>vii) All facade elements must be contained within the site boundaries.</p> <p>viii) Building services, such as drainage</p>	<p>The existing elevations shall be upgraded as a result of the proposed development and the new First floor level shall provide suitable articulation in the form of front and rear balconies to break up the building mass. The northern side elevation which shall be visible from the public domain incorporates window openings and a difference in material for the upper level to further articulate the building.</p>	Yes						

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DCP Clause	Control	Proposal	Compliance
	<p>pipes shall be coordinated and integrated with overall facade and balcony design.</p> <p>ix) Balconies to the street facade are to be recessed behind the principal building facade.</p> <p>x) Balcony balustrades should comprise a light open/glazed material and should be compatible with the style of the building.</p>		
3.2	Roof Forms		
	<p>i) In centres where parapet forms are prevalent, development should include parapets that reflect the rhythm, scale and detailing of existing parapets.</p> <p>ii) Provide flat roofs where these prevail across the centre, unless the site conditions justify an alternative roof form (eg. Corner sites).</p> <p>iii) Design roof forms to generate a visually interesting skyline, while minimising apparent bulk and potential for overshadowing. The style and pitch of new roofs should relate sympathetically to neighbouring buildings.</p> <p>iv) Relate roof forms to the size and scale of the building, the building elevation and the three dimensional building form.</p>	<p>The existing streetscape comprises a mixture of parapet and sloped roof forms and the proposed skillion roof shall not be inconsistent with the scale or rhythm of the centre.</p> <p>The proposal adopts a flat roof for the rear upper addition to minimise the bulk and scale. The streetscape comprises a mixture of low pitched roof forms and parapet roofs, and therefore the proposal shall not be out of character with the existing streetscape of the laneway. The proposed upper level shall be screened by the adjoining development to the south, and therefore shall not result in any unreasonable overshadowing impacts.</p>	Yes
3.4	Colours, materials and finishes		
	<p>i) Utilise high quality and durable materials and finishes which require minimal maintenance.</p> <p>ii) Combine different materials and finishes to assist building articulation and modulation. The use of face bricks and/or natural stone cladding may assist the integration of new development into the existing streetscape.</p> <p>iii) The following materials are considered incompatible:</p> <ul style="list-style-type: none"> <li>• Large wall tiles;</li> <li>• Rough textured render and/or bagged finish;</li> <li>• Curtain walls; and</li> <li>• Highly reflective or mirror glass.</li> </ul>	<p>The metal roof, and combination of brick, weatherboard and painted finish provide articulation and modulation to the building. No adverse visual impacts to the streetscape are likely to occur.</p>	Yes



DCP Clause	Control	Proposal	Compliance
	iv) Avoid large expanses of any single material to facades. v) Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.		
<b>5</b>	<b>Amenity</b>		
5.1	Solar Access		
	i) Commercial and mixed use development are not to reduce sunlight to adjacent dwellings below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 8am and 4pm on 21 June. iv) Ensure that building layouts facilitate good solar access to both internal and external living spaces (eg. Ideally locate living areas to the north and east, and service areas to the south and west of the development). v) Maximise any northerly aspect and optimise the number of north facing windows. Shade north facing windows with roof eaves, verandahs or balconies, awnings or other horizontal shading devices.	The shadow diagrams submitted with the application demonstrate that overshadowing shall largely be to the roof of the adjoining property and no significant adverse overshadowing impacts to neighbouring properties are likely to occur.	Yes
<b>6</b>	<b>Shop Top Housing</b>		
	iii) Private open spaces should be: <ol style="list-style-type: none"> <li>located adjacent to and accessible from the main living areas of the dwelling;</li> <li>located so as to maximise solar access, i.e. preferably orientated from north east to north west;</li> <li>located to ensure privacy and away from noisy locations, where possible; and</li> <li>screened by vegetation or a wall to ensure privacy.</li> </ol>	The new balconies provide privacy screens or blade walls. However, it is considered that the upper level rear balcony shall have the capacity to overlook the adjoining rear yard and therefore an additional screen is recommended on the northern side of the balcony.	Satisfactory, as conditioned.

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

**File Reference:** DA/622/2021

D67/22

## Development Consent Conditions



<b>Folder /DA No:</b>	DA/622/2021
<b>Property:</b>	34 Mawson Parade, Chifley NSW
<b>Proposal:</b>	Alterations and additions to existing mixed-use development including alterations to existing dwelling by conversion of a car space to a rumpus room and addition of storage room at lower ground floor, extension of ground floor to the northern boundary, and construction of a new first floor with front and rear-facing balconies, alterations to the existing shop with addition of an awning, and associated works (variation to FSR of the RLEP 2012).
<b>Recommendation:</b>	Approval

### GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations 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>
DA03 (Existing and Demolition Plan), Revision C	ArchiSpectrum	21 July 2022
DA04 (Proposed Lower Ground Floor Plan), Revision C	ArchiSpectrum	21 July 2022
DA05 (Proposed Ground Floor Plan), Revision C	ArchiSpectrum	21 July 2022
DA06 (Proposed First Floor Plan), Revision C	ArchiSpectrum	21 July 2022
DA07 (Site and Roof Plan), Revision C	ArchiSpectrum	21 July 2022
DA08 (West & East Elevations), Revision C	ArchiSpectrum	21 July 2022
DA09 (North & South Elevations), Revision C	ArchiSpectrum	21 July 2022
DA10 (Section), Revision C	ArchiSpectrum	21 July 2022
DA16 (External Finishes), Revision C	ArchiSpectrum	21 July 2022

<b>BASIX Certificate No.</b>	<b>Dated</b>
A428671	03 September 2021

#### Amendment of Plans & Documentation

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

- A privacy screen having a height of 1.6m (measured above the finished floor level) shall be provided to the northern side of the First Floor level western balcony.

Privacy screen/s must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
  - Fixed lattice/slats with individual openings not more than 30mm wide;
  - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- b. A screen having a height of 1.8m as measured from the external access stair landing of No. 36 Mawson Parade is permitted along the southern side of the new Ground Floor level western roof area (to the west of the balcony), in order to provide security for the subject premises.

#### REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a relevant 'Construction Certificate' is issued for the development by a Registered (Building) Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the relevant construction certificate.

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

#### Consent Requirements

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

#### External Colours, Materials & Finishes

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

#### Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$175,186.00 the following applicable monetary levy must be paid to Council: \$875.95.

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

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

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

Where:

**IDC** = the indexed development cost

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

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

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

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

#### Long Service Levy Payments

6. 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 and 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.*

#### **Stormwater Drainage**

7. Surface water from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:-
- Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);
  - The surface water/stormwater is to be drained and discharged to the street gutter in Mawson Parade or Mawson Lane
  - External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
  - Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

#### **Sydney Water Requirements**

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

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

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

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

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

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

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

#### **Waste Management**

9. The Waste management plans shall not be approved as part of this development consent. An amended Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development (commercial & residential), is required to be submitted to and approved by Council's Director of City Planning.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- ☐ The use of the premises and the number and size of occupancies.
- ☐ The type and quantity of waste to be generated by the development.
- ☐ Demolition and construction waste, including materials to be re-used or recycled.
- ☐ Details of the proposed recycling and waste disposal contractors.
- ☐ Waste storage facilities and equipment.
- ☐ Access and traffic arrangements.
- ☐ The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at;  
[https://www.randwick.nsw.gov.au/data/assets/pdf\\_file/0007/22795/Waste-Management-Plan-Guidelines.pdf](https://www.randwick.nsw.gov.au/data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf)

10. The commercial garbage area must be separated from the residential bin storage areas.

#### 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 relevant construction certificate for the development.

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

#### Building Code of Australia & Relevant Standards

11. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).

Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application

12. Access, facilities and car parking for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Registered Certifier for the development. Details of the required access, facilities and car parking for people with disabilities are to be included in the construction certificate for the development.

#### BASIX Requirements

13. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 75 of the *Environmental Planning and Assessment Regulation 2021*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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

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



**Structural Adequacy**

14. Certificate of Adequacy supplied by a *professional engineer* shall be submitted to the *Certifier (and the Council, if the Council is not the Certifier)*, certifying the structural adequacy of the existing structure to support the First Floor level addition.

**Site stability, Excavation and Construction work**

15. A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:
- Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.
  - Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
  - Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
  - Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
  - Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS**

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

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

**Building Certification and Associated Requirements**

16. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):
- a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.  
  
A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
  - a *Registered (Building) Certifier* must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an *occupation certificate*; and
  - a *principal contractor* must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the *Principal Certifier* and Council must be notified accordingly (in writing); and

- d) the *principal contractor* must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the *Principal Certifier*; and
- e) at least two days notice must be given to the *Principal Certifier* and Council, in writing, prior to commencing any works.

**Home Building Act 1989**

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

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

**Dilapidation Reports**

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

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

**Construction Site Management Plan**

19. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles
- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- location and size of waste containers/bulk bins
- provisions for temporary stormwater drainage
- construction noise and vibration management
- construction traffic management details
- provisions for temporary sanitary facilities
- measures to be implemented to ensure public health and safety

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

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

**Sediment Control Plan**

20. A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for *Managing Urban Stormwater – Soils and Construction*, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

**Demolition Work Plan**

21. A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:

- a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.
- b) The Demolition Work Plan must include the following details (as applicable):
- The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor
  - Details of hazardous materials in the building (including materials containing asbestos)
  - Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)
  - Measures and processes to be implemented to ensure the health & safety of workers and community
  - Measures to be implemented to minimise any airborne dust and asbestos
  - Methods and location of disposal of any hazardous materials (including asbestos)
  - Other measures to be implemented to ensure public health and safety
  - Date the demolition works will commence/finish.

The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

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

**Notes:** *it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m<sup>2</sup> of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.*

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

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

Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

A *Construction Noise and Vibration Management Plan*, prepared in accordance with the DECC Construction Noise Guideline, by a suitably qualified person is to be developed and implemented throughout the works, to the satisfaction of the Council. A copy of the plan must be provided to the Council and Principal Certifying Authority prior to the commencement of site works.

#### **Public Liability**

23. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

#### **Public Utilities**

24. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.
25. Should additional services be required, a *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any

public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.

#### 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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of public health, safety and environmental amenity during construction.

##### Site Signage

26. A sign must be installed in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:

- name, address, contractor licence number and telephone number of the *principal building 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".

##### Building & Demolition Work Requirements

27. 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>
Excavations within rock, sawing of rock, use of jack-hammers, driven-type piling or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm (maximum)</li> <li>• As may be further limited in Noise &amp; Vibration Management Plan</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Internal work only within a commercial or industrial development, located in a commercial or industrial zone, which is not audible within any residential dwelling or commercial or industrial premises	<ul style="list-style-type: none"> <li>• Monday to Saturday - No time limits (subject to work not being audible in any residential dwelling or commercial/industrial tenancy or building)</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> <li>• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

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

28. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with a *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority guidelines for Construction Noise and Assessing Vibration

**Temporary Site Fencing**

29. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:
- Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
  - Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
  - All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
  - Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
  - Site access gates must open inwards and not onto Council land.

*Notes:*

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

**Site Management**

30. Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:
- 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.
  - Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
  - Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
  - 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.
  - During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
  - Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.



- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

#### **Site Access**

31. A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover. Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.

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

32. Demolition work must be carried out in accordance with relevant SafeWork NSW requirements and Codes of Practice; Australian Standard – AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a *demolition work plan*, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works,
- Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

A copy of Council's Asbestos Policy is available on Council's web site at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

#### **Dust Control**

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

*Dust control measures and practices may include:*

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*

- *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- *Installation of water sprinkling system or provision hoses or the like.*
- *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- *Landscaping and revegetation of disturbed areas.*

#### **Excavations & Support of Adjoining Land**

34. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 74 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

35. 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 are to be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

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

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

#### **Complaints Register**

36. A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.

Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigated, actioned and responded to and documented in a Complaints Register accordingly.

Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.

#### **Survey Requirements**

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

- prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,
- prior to construction (pouring of concrete) of new floor levels,
- prior to issuing an *Occupation Certificate*, and
- as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.

#### **Building Encroachments**

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

39. 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).

#### **Road / Asset Opening Permit**

40. A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.

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

#### **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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

#### **Post-construction Dilapidation Reports**

41. A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.

The dilapidation report shall detail whether:

- a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and
- b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent.

The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.

**Occupation Certificate**

42. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

**Fire Safety Certificate**

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

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

**Structural Certification**

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

**Sydney Water Certification**

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

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

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

**BASIX Requirements & Certification**

46. In accordance with the *Environmental Planning and Assessment (Development, Certification & Fire Safety) Regulation 2021*, 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.

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

47. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.

*Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.*

**Noise Control Requirements & Certification**

48. The use and operation of the development (including all plant and equipment) shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and *Regulations*.
49. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from the development (and plant and equipment) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent.

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

**Structural adequacy of awning over footpath**

50. A report is required to be obtained from a professional structural engineer, which assesses and reports on the structural adequacy of the awning located over the footway and attached to the subject premises.

The report is required to:

- a) Confirm that the subject awning is currently structurally adequate and fit-for-purpose, or;
- b) Detail the necessary works required to be carried out to ensure that the awning is structurally adequate safe.

In the case of a report provided in accordance with a) above, the report must be provided to the Principal Certifier and Council prior to the issuing of an Occupation Certificate or commencement of the use (whichever the sooner).

In the case of a report provided in accordance with b) above, the necessary works identified in the report must be carried out and a further report or certificate must be provided to the Principal Certifier and Council which confirms that the necessary work has been carried out and the subject awning is structurally adequate and fit-for-purpose, prior to the issuing of an Occupation Certificate or commencement of the use of the land (whichever the sooner) or other timeframe approved by Council in writing.

**Council's Infrastructure, Vehicular Crossings, street verge**

51. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
52. Any external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
  - b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
  - c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.



**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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

**Operational of the Commercial Premises**

53. The operation of the commercial premises must continue to operate in accordance with the development consents issued previously for the use of this site. No changes are approved to the use or hours of operation of the premises.

**Use of Parking spaces**

54. A single off-street carspace must be provided & accessed from Mawson Lane & shall be allocated to the 4 bedroom unit.

**Fire Safety Statement**

55. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* on an annual basis each year and as specified in the *Fire Safety Schedule* for the building.

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

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

**Environmental Amenity**

56. 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.
57. The use and operation of the premises shall not give rise to an environmental health or public nuisance, cause a vibration nuisance or, result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations.
58. The proposed use and operation of the premises (including all plant and equipment) must not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background ( $L_{A90}$ ), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an  $L_{Aeq, 15 \text{ min}}$  and adjusted in accordance with the NSW Office of Environment & Heritage/Environment Protection Authority Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

**Waste Management**

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

Any trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales

and details of the proposed waste collection and disposal service are to be submitted to the Principal Certifying Authority and Council prior to commencing operation of the business.

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

D67/22



## Development Application Report No. D68/22

**Subject:** 22 French Street, Maroubra (DA/111/2022)

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### Executive Summary

<b>Proposal:</b>	Alterations and additions to the existing dwelling house including internal and external modifications, new double garage, front fence, swimming pool, landscaping, tree removal and associated earthworks.
<b>Ward:</b>	Central Ward
<b>Applicant:</b>	Nadine Nakache Design
<b>Owner:</b>	M & A Logan
<b>Cost of works:</b>	\$941,408
<b>Reason for referral:</b>	The proposal includes a building height variation which exceeds 10% of the standard

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the building height development standard in Clause 4.3 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/111/2022 for alterations and additions to the existing dwelling at 22 French Street Maroubra subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/111/2022 - 22 French Street, MAROUBRA NSW 2035 - DEV - Ms N Port

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## 1. Executive summary

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

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

The proposal seeks development consent for alterations and additions to the existing dwelling house including reconfiguration of the floor plan at lower ground level, internal alterations within the ground level to provide for an open plan living area at rear, new bathroom and laundry, within the first floor reconfigure the floor plan and renovate the existing balcony at the front of the dwelling. A new double garage is proposed at street level, a new swimming pool and landscaping works within the rear yard.

The key issues associated with the proposal relate to the work within the existing roof to provide a roof window, the existing roof being above the building height standard, the external wall height of the building and the new double garaging to the front of the site.

The proposal is recommended for approval.

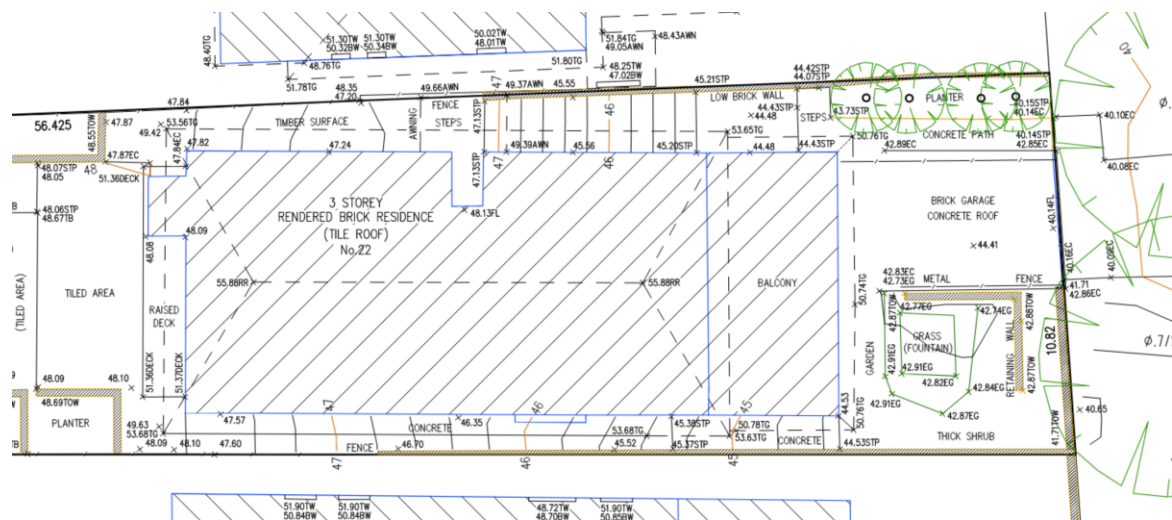
## 2. Site Description and Locality

The subject site is known as 22 French Street Maroubra and is legally described as Lot C in DP 322382. The site is 551m<sup>2</sup>, is irregular in shape and has a 10.82m frontage to French Street, and depth of 56.425m/57.685m. The site falls steeply to the street with a difference in level of approximately 11m.

At present on site there is an existing 2/3 storey free standing dwelling.

See extract of survey below.





**Figure 1. Survey extract.**



**Picture 1. Existing street frontage and garage.**

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**Picture 2. Adjoining property No. 24 French Street and subject property.**



**Picture 3. Adjoining property No. 20 French Street and subject property**





Picture 4. Existing dwelling from within the front of the site



Picture 5. Existing rear of the site

### 3. Relevant history

A Prelodgement application (PL/22/2021) was lodged with Council and advice provided in relation to a proposal for the demolition of the existing building and construction of a three storey dual occupancy development with basement parking, removal of trees and associated site works.

### 4. Proposal

The proposal seeks development consent for alterations and additions to the existing dwelling including the following;

- Demolition of existing garage at the front of the site and replacement with new double garage with roof terrace and garden,
- New entry steps to northern side of dwelling and inclinator to the southern side,
- Internal floor plan reconfiguration at lower ground level,
- Internal floor plan reconfiguration at ground level,
- Internal floor plan reconfiguration at the first floor level,
- New windows to reflect the floor plan changes,
- Alteration to existing upper level front balony to provide new balustrade, doors and perimeter planting,
- Enlargement of rear balcony,
- Feature window within the first floor gable end at front of dwelling,
- Installation of new swimming pool, landscaping and pergola to the rear of the dwelling.



**Figure 2. Photo montage of proposal**



## 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Community Participation Plan. No response has been received.

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

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for house needs of the community with a low density residential environment that recognizes the desirable elements of the existing streetscape and built form and contributes to the desired future character of the area and protect the amenity of 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)	0.65:1	0.53:1	Yes
CI 4.3: Building height (max)	9.5m	10.55m (same as existing)	No, see Clause 4.6 Objection

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

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

## 6. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Existing	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	9.5m	10.55m	10.55m	1.05m	11%

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

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



*(b) the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

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

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

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

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

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

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

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

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

### 6.1. Exception to the Building Height Standard Clause 4.3

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed development includes minor alterations and additions to the existing upper level of the dwelling, including new windows and planters above the height limit. However, these works do not alter the existing height of the building and the works will improve the general bulk and visual presentation of the dwelling to the street.

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the variation will not present any additional or increased bulk, privacy and amenity or overshadowing impacts on the neighbouring properties.

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

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

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

The form and scale respond to the broader context of the site and the low density residential form that is characterized by two and three storey dwellings along the western side of French Street.

The height is not increased and will not result in any additional overshadowing to the adjoining dwellings.

The extent of the variation is existing and will still provide for a well-articulated building compatible with the locality.

Assessing officer's comment: The proposed variation is solely a result of the height of the existing building, with the existing roof form retained. The proposed works shall be contained within the existing structure, albeit above the height limit. In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. These are based on the fact that the existing building is already in exceedance to the height standard and these works do not increase the existing non-compliance.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Building Height standard and R2 zone is provided below:

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

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

Assessing officer's comment: The desired future character of the locality is established in the objectives of the R2 zone.

The size and scale of the proposed development is compatible with the 'desired future character of the locality' as it will maintain the existing bulk and scale of the development.

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

Assessing officer's comment: The site is not in a conservation area or near a heritage item.

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

The assessment that must be made is whether or not the development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

- Visual bulk: The streetscape presentation of the dwelling remains as a two and three storey dwelling and is not altered by this proposal.

- **Overshadowing:** The proposal does not alter the overall height and bulk and scale of the building and the minor works to the front portion of the dwelling will result in negligible additional overshadowing to the adjoining properties.

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

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

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

The objectives of R2 zone are:

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

Assessing officer's comment: The proposed development will not conflict with the objectives of the R2 zone as it maintains the use of the dwelling and does not significantly alter the bulk and scale of the development and will not adversely impact upon the amenity of the adjoining properties.

The development is consistent with the objectives of the building height standard and the R2 zone. Therefore, the development will be in the public interest.

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

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

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

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

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

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

## **Conclusion**

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

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

### **7.1. Randwick Comprehensive DCP 2013**

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

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

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

## 8. Environmental Assessment

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

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

### 8.1. Discussion of key issues

#### External wall height

Section 3.2 of the RDCP details the objectives and controls in relation to building and external wall height.

The objectives seek to;

- a) Ensure the development height establishes a suitable scale to the street and contributes to its character,



- b) Ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity, and
- c) Ensure the form and massing of development respect the topography of the site.

The numerical controls stipulate a maximum external wall height of 7m and for steeply sloping sites the maximum external wall height is 8m. The proposal because of the minor works to the front of the dwelling to modify the façade for the renovated balcony will result in an external wall height of up to 8.8m.

Therefore, because of the non-compliance with the building height control consideration must be given as to whether the proposal will still satisfy the relevant objectives of this part of the DCP.

The non-compliance of the existing and proposed external wall height control arises because of the steep fall of the site to the front and the existing site levels of the site. The non-compliance is at 0.8m, which exceeds the 8m allowance and control for sloping sites.



Figure 3. Proposed south western elevation of dwelling

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**Figure 4. Proposed north eastern elevation of dwelling**

Having regard to the existing topography of the site, the minor nature of the proposed works and the overall reasonableness of the proposed development it is considered that the proposal can be supported as it has not been demonstrated that the development will result in any unreasonable or adverse amenity impacts upon the neighbouring dwellings in terms of overshadowing, privacy and visual amenity and complies with the relevant objectives and controls for these criteria in the RDCP.

It is also noted that the non-compliance at 0.8m is not significantly above the maximum and is only at the very front most portion of the dwelling with the remainder of the dwelling complying in terms of the overall and wall height of the building.

For these reasons it is noted that whilst the numerical controls that relate to external wall height have been exceeded the relevant objectives of this part of the DCP have been satisfied as the proposal;

- Ensures development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, privacy and visual amenity, and the form and massing of the development respects the topography of the site.

### **Car parking and access**

Part 6 of the Randwick DCP details the objectives and controls in relation to car parking and access.

The objectives seek to;

- a) Ensure car parking and access facilities do not visually dominate the property frontage or streetscape,
- b) Ensure parking facilities are integrated with the architectural expression of the dwelling as an integrated element,
- c) Minimise hard paved surfaces occupied by driveways and parking facilities and maximise opportunities for deep soil planting and permeable surfaces for stormwater infiltration,
- d) Ensure the location and design of parking and access facilities do not pose undue safety risks on building occupants and pedestrians, and
- e) Ensure the location and design of parking and access facilities do not adversely impact on the amenity of neighbouring properties.

For parking facilities forward of the front façade alignment the relevant controls that allow for garage structures to be considered are;

- a) There is no alternative feasible location for accommodating car parking,
- b) The site has a significant slope of up to 5m with the dwelling being elevated above the street level,
- c) The garage will not adversely affect the visual amenity of the street and the surrounding areas as there are several similar examples of garages sited in the same location to the front of the dwelling,
- d) The garage will not pose an undue risk on the safety of pedestrians, and
- e) The garage will not require the removal of significant landscape elements that enhance the streetscape such as rock outcrop.

It is noted that there is an existing garage that is sited to the front of the site within the excavated front yard portion of the site and this proposal seeks to demolish this garage and build a large double garage integrated with the dwelling and also include new entry steps and inclinator. rebuild and enlarge the garage in the same location to also provide with a store and new steps behind the retaining wall at the front of the site. The garage roof will also include a paved terrace and rooftop garden.

The existing site constraints remain the same and there are no objections to the new garage replacing the existing as the relevant considerations and controls as detailed above all apply.

In addition, almost all of the other dwellings in this section of French Street also include similarly sited garages to the front of dwellings, either across the whole site or part. The existing established streetscape character and visual amenity remain the same. See photos below.



**Picture 6. No. 26 French Street Maroubra**



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Picture 7. No. 24 French Street Maroubra



**Picture 8. Nos. 18 & 20 French Street Maroubra**



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**Picture 9. Nos. 14 & 16 French Street Maroubra**

## **9. Conclusion**

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

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the development remains compatible with the existing character of the locality and will not result in any adverse amenity to the adjoining properties.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape

## Appendix 1: Referrals

### 1. Internal referral comments:

#### Development Engineers

An application has been received for major alterations and additions at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by Nadine Nakache Design;
- Statement of Environmental Effects by Myriad;
- Arboricultural Report by Rainbow Tree Consultancy, dated 18/11/21;
- Detail & Level Survey by Total Surveying Solutions.

#### Drainage Comments

Stormwater runoff from the site shall be discharged to the kerb and gutter along the site frontage by gravity.

#### Undergrounding of power lines to site

At the ordinary Council meeting on the 27<sup>th</sup> May 2014 it was resolved that;

*Should a mains power distribution pole be located on the same side of the street and within 15m of the development site, the applicant must meet the full cost for Ausgrid to relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground UGOH connection.*

The subject **is not** located within 15m of a power pole on the same side of the street hence the above clause **is not** applicable.

#### Tree Management Comments

There are two mature/over-mature, 8m x 8m *Agonis flexuosa* (Willow Myrtles, T1-2) on Council's French Street nature strip, being one each along either side of the existing vehicle crossing, which while protected by the DCP, are only in fair health and poor condition due to a combination of their age, the effects of repeated pruning away from the overhead wires, footpath and driveway, with splits/decay also now evident in their trunks and branches, which reduces their suitability for retention, even irrespective of these works.

This species is well known as having a short life span and for developing structural faults, which is why they are no longer even planted in public streets and parks at all, with both now considered to be nearing the end of their useful life, meaning that removal at some stage in the near future is highly likely, as has already been occurring in large quantities throughout the rest of the LGA for species of this age.

They were already observed to obstruct a clear line of sight when exiting the property, meaning that regular and ongoing clearance lopping would be required if they remained in-situ, and as the existing vehicle crossing encroaches their SRZ's, it would have likely resulted in root damage during its construction, with such a minimal offset also not complying with the requirements of Council's Street Tree Masterplan.

While PL/22/2021 proposed a new driveway and garage between both of their trunks, in roughly the same position as the existing structures, these plans now show that it will all be relocated a further 3 metres to the southwest of its current position, to then be in direct conflict with the southern tree (T1), and given its reduced rating described above, no objections are raised to its removal, wholly at the applicant's cost, with relevant conditions provided, consistent with past advice.

For the reasons given above, it would also not be possible or realistic for Council to refuse this application or even this component in an attempt order to retain this tree.

The loss of T1 as described above would then leave T2 exposed to wind-throw from strong southerly directed winds if it was retained in isolation, which is a concern for Council out in the public domain, especially as root development on its southern (tensile) aspect would already be limited due to the

presence of the crossing hard up against its trunk, with demolition/removal of this crossing, along with any re-grading works to match in with the new alignment levels to also have a de-stabilising effect.

As described above, due to a combination of its age-class/life span and concerns for its future status/stability, it appears unlikely that T2 can be safely retained into the future, with this development seen as an opportunity to replace both declining specimens, at no cost to Council, with two more desirable, local coastal species, which will benefit native fauna as well as ensure long-term amenity in the streetscape for many decades to come as, with conditions provided on that basis.

It is noted that any re-design, such as providing the crossing over the opposite/northern half of the site would then result in the same outcome anyway (removal of both trees), as T2 would be directly affected, with T1 then unable to remain on its own, as described earlier.

The two mature, 7-9m tall *Archontophoenix cunninghamiana* (Bangalow Palms, T3-4) that are growing in an existing raised masonry planter in the rear setback of this site, beyond the rear of the dwelling & BBQ area, to the south of the rear access stairs, are non-endemic feature species that are protected by the DCP, which are shown and recommended for retention in the Arborist Report.

While works associated with upgrading the retaining wall uphill, immediately to their west for the new pool area (RL49.74) will theoretically result in a major encroachment of their TPZ's, this should not affect their roots as they are contained at a lower ground level (48.70), with the existing lower walls, to their east, to remain unchanged, and given their high tolerance to disturbance, relevant protection conditions have been imposed, as recommended by the Arborist.

All other vegetation in the upper, most western terrace area of this site (T5-6) will remain completely unaffected as the only works here will be demolition of the existing paved path, so conditions are not needed, with the same also applying to the neighbouring specimens in the rear of no.24 to the west, being T7-8.

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

### **CLAUSE 4.6 VARIATION (HEIGHT) IN RELATION TO THE PROPOSED ALTERATIONS AND ADDITIONS AT 22 FRENCH STREET, MAROUBRA**

#### **1. INTRODUCTION**

The following Clause 4.6 Variation request has been prepared on behalf of Nadine Nakache in support of the proposed variation to the height development standard in relation to the proposed alterations and additions to the existing dwelling at 22 French Street, Maroubra.

The development standard to which this request for variation relates is *Clause 4.3 Height of Buildings* in the *Randwick Local Environmental Plan (RLEP) 2012*.

The site is identified as having a maximum permissible height of 9.5m on the Height of Buildings Map.

The existing dwelling has a maximum height ranging between 6m and up to 10.55m due to the steep and varying topography through the site.

The existing dwelling therefore already exceeds the maximum permissible height for a small portion near the front of the dwelling.

The proposed development includes minor alterations to the upper level, including new windows and planters above the height limit. However, there is no proposed change to the existing height of the building.

The extent of the contravention is a maximum of 1.05m and decreasing towards the rear of the site for a length of up to 3.

The breach in the development standard will not be discernible when viewed from the public or private domains as the existing height, setbacks and overall building envelope will remain unchanged.

The variation to the height does not increase the intensity of the development and will not give rise to any new or unreasonable overshadowing.

Overall, it is unreasonable to deny a variation that would encourage low density residential development in a *R2 Low Density Residential* zone in circumstances where the variation can occur without significant adverse impacts.

The proposal seeks flexibility in the application of the height standard to the development in the circumstance of this case.



The variation to the height development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.

## 2. THE SITE

The site is located at 22 French Street, Maroubra and legally described as Lot C DP 322382, fronting French Street and backing onto St Johns Anglican Church. It is located on the norther side of the street, is generally rectangular in shape with a frontage to French Street of 10.82m and a total site area of 550.8m<sup>2</sup>.

The site currently contains a three-storey dwelling, a large rear elevated/terraced rear private open space area with a small spa and a single garage integrated into the front setback area.

It has a total gross floor area (GFA) of 289.81m<sup>2</sup> spread over the three levels with a floor space ratio (FSR) of 0.53:1.

The site falls approximately 11m from the rear down to French Street.

The fall through the site is stepped or terraced over three main areas including the rear landscaped private open space area, the main dwelling and rear deck/tiled area and the front of the site.



**Figure 1**

**Aerial of site and surrounding properties (site outlined in red and shaded yellow)**



**Figure 2**

**Extract of the site survey**





**Figure 3**

**Aerial oblique view of the site frontage and neighbouring properties**



**Figure 4**

**View of the rear of the existing dwelling from the mid-level rear deck area showing part of the existing spa**



**Figure 5**

**View of part of the private open space area at the elevated rear portion of the site**

### 3. PROPOSED DEVELOPMENT

A summary of the proposed development includes:

- Minor demolition and excavation work at the front of the site, removal of several internal walls, provide a more useable landscaped private open space at the rear and to accommodate a new swimming pool.
- Removal of two mediums sized trees at the front of the site to accommodate for the driveway access.
- Provide a new double garage and front pedestrian access entry on the lower ground-floor.
- Reconfiguration and upgrading of the internal layout of the main dwelling on the ground and first-floors.
- New front bay window arrangement and planter boxes as well as other general upgrade works to the front façade.
- New landscaping works to the front and rear of the site.

The proposed development will provide general upgrade and refurbishment works to an existing dwelling, maintaining the four-bedroom dwelling and low density residential setting.

The dwelling will have a total a gross floor area (GFA) of 277.47m<sup>2</sup> and a floor space ratio (FSR) of 0.50:1, well below the maximum permissible FSR of 0.65:1.

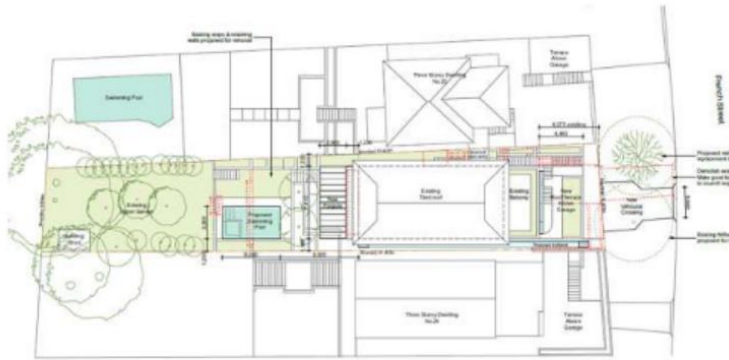
The skilful design and massing of the proposed building envelope has been undertaken having regard to the steeper topography of the site, the size and setting of the existing building, improving the amenity of the future occupants of the dwellings and maintaining the amenity of adjoining properties, particularly in relation to solar access, privacy, and views.

The proposed building envelope has also been designed with regard to appropriately addressing the streetscape, maintaining the overall height and general presentation to the street.



**Figure 6**

**Montage of the proposed development showing the upgrade and refurbishments to the front façade, including new bay windows, and new double garage and pedestrian entry and how the building aligns with the steep topography of the site**



**Figure 7**

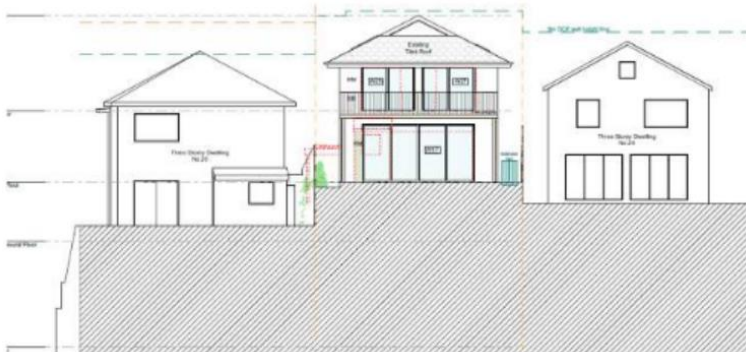
**Extract of the proposed site plan**



**Figure 8**

**Extract of the proposed front elevation**

**showing the site in context with the neighbouring properties**



**Figure 9**

**Extract of the proposed rear elevation**



**Figure 10**

**Extract of the proposed southwest side elevation**



#### 4. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

*Clause 4.6 Exceptions to Development Standards* of the *Randwick Local Environmental Plan (RLEP) 2012* provides a mechanism by which a development standard can be varied.

The objectives of this clause as outlined in Clause 4.6(1) are:

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

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for and from the development.

While there is no specific provision that requires compliance with the objectives of the clause it is still useful to provide a preliminary assessment against the objectives of the Clause.

The proposal seeks flexibility in the application of the height standard to the development in the circumstance of this case.

The proposal has been designed to best address the site constraints, the streetscape and to ensure neighbours' amenity is maintained, or improved. The built form will positively contribute to the French Street streetscape, with an articulated façade with a more contemporary design.

The existing height non-compliance at the front of the site is a direct consequence of the steep topography of the site and the pitched roof design. There is no proposed change to the existing height.

The proposed development includes minor alterations to the upper level, including new windows and planters above the height limit, requiring the submission of a Clause 4.6 Variation.

The minor height variation is for a small portion of the pitched roof at the front of the building. The proposed alterations and additions to the existing dwelling does not present any additional or more significant privacy, amenity or overshadowing over the neighbouring properties compared to existing situation.

The proposed alterations and upgrade works to the front facade and the roof will provide an improved presentation to the street and is consistent with the height and presentation of surrounding properties. Therefore, it is considered that the proposed height provides a better planning outcome for the site.

Clause 4.6(2) provides consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

The NSW Land and Environment Court decisions of *Wehbe v Pittwater Council* (2007) LGERA 446; and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 provide assistance on the approach to justifying a contravention to a development standard.

## 5. CLAUSE 4.6(3)(A): UNREASONABLE OR UNNECESSARY

The case of *Wehbe* provides examples of how a variation to a development standard can be shown to be unreasonable or unnecessary (as required by clause 4.6(3)(a)).

Although this case related to a variation of development standards under SEPP 1, it has been adopted as being of continuing relevance to variations under clause 4.6.

The examples provided in *Wehbe* are:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
3. *The underlying object or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The applicant seeks a variation to the height development standard, which is considered unreasonable and unnecessary in the circumstances of the case on the basis of *Wehbe* reasons 1 and 3, as explained in detail below.

Overall, it is unreasonable to deny a variation that would encourage low density residential development in a *R2 Low Density Residential* zone in circumstances where the variation can occur without significant adverse impacts.

The other heads of consideration under Clause 4.6 are also addressed below.

## 6. HEIGHT

### 6.1 The Standard to be Varied and the Extent of Variation

The standard the applicant seeks to vary is *Clause 4.3 Height* in the *Randwick Local Environmental Plan (RLEP) 2012*.

The site is identified as having a maximum permissible height of 9.5m.

The existing dwelling has a maximum height ranging between 6m and up to 10.55m due to the steep and varying topography through the site.

The existing dwelling therefore already exceeds the maximum permissible height for a small portion near the front of the dwelling.

The proposed development includes minor alterations to the upper level, including new windows and planters above the height limit. However, there is no proposed change to the existing height of the building.

The extent of the contravention is a maximum of 1.05m and decreasing towards the rear of the site for a length of up to 3.



The breach in the development standard will not be discernible when viewed from the public or private domains as the existing height, setbacks and overall building envelope will remain unchanged.

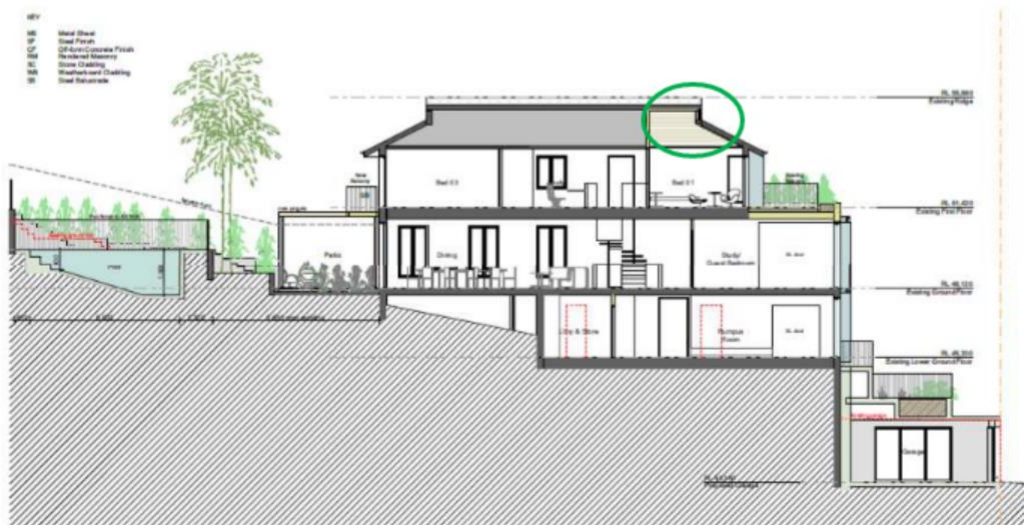
The form and scale respond to the broader context of the site, and the low density residential form that is characterised by two to three storey dwellings along French Street.

The variation to the height does not increase the intensity of the development and will not give rise to significant adverse overshadowing as the existing height and roof form will be retained.



**Figure 11**

**Extract of the proposed side northeast elevations showing the main dwelling and existing height being retained with the 9.5m height plane (shown in dashed red) and the wall 8m DCP wall height plane (shown in dashed blue) with the area of existing and proposed height on-compliance circled in green**



**Figure 12**

**Extract of the long section through the site showing the steep topography and existing levels through the site with the area of existing and proposed non-compliance circled in green**

Clause 4.3 Height of Buildings of the RLEP 2012 states:

#### **4.3 Height of buildings**

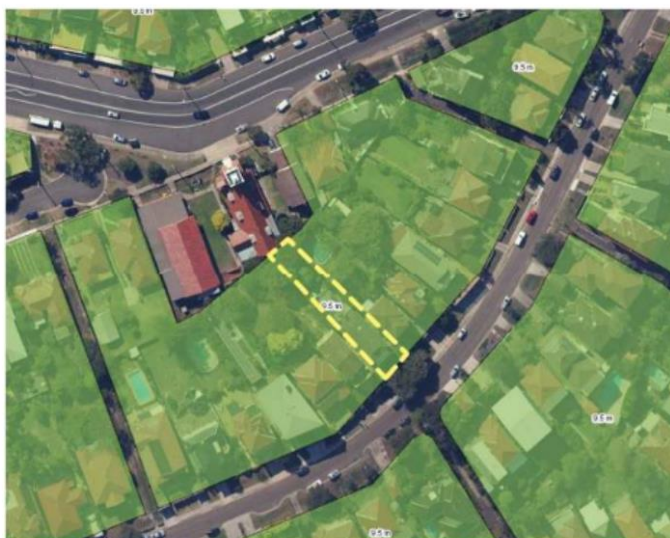
(1) The objectives of this clause are as follows—

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

(2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.

The site has been identified as being located on land with a maximum permissible height of 9.5m.



**Figure 13**

**Extract of the Height of Buildings Map showing the 9.5m height limit of the site and surrounding properties**

**(Source: NSW ePlanning Spatial Viewer)**

#### **6.3 4.6(3)(a): Unreasonable or unnecessary in the circumstances of the case**

Compliance with the height standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the height standard are achieved, notwithstanding the numerical non-compliance, as explained below. The general non-compliance of the main building is a consequence of the steep topography, the existing building and the pitched roof design.

The proposed development includes minor alterations to the upper level, including new windows and planters above the height limit. However, there is no proposed change to the existing height of the building.

The variation to the height does not increase the intensity of the development and will not give rise to significant adverse overshadowing.

The proposed development will provide a compliant floor area and front, side and rear setbacks, provide sufficient private open space and landscaped areas and will not present significant or unreasonable privacy or amenity impacts on the neighbouring properties.

#### **Consistency with Clause 4.3 Height Objectives**

The underlying object or purpose of the standard, in terms of ensuring that the bulk and scale of development is consistent with the existing and desired future character of the area, would be defeated or thwarted if compliance was required and compliance with the standard is also unreasonable for this reason.

Overall, it is considered that the proposed building envelope will not result in any unacceptable adverse impacts on the surrounding urban environment in terms of urban design, built form, overshadowing, residential amenity, wind impacts or impacts on utilities infrastructure.

The objectives of Clause 4.3 have been addressed in the following table.

Development Standard Objectives	Response
(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,	<p>As noted above and throughout the Statement of Environmental Effects (SEE) submitted with the application, the scale of the dwelling is compatible with the characteristics of the site and the locality in general.</p> <p>The proposed development includes minor alterations to the upper level, including new windows and planters above the height limit. However, there is no proposed change to the existing height of the building and the general bulk and presentation to the street will improved.</p> <p>The proposal has been designed to best address the site constraints, the streetscape and to ensure neighbours' amenity is maintained.</p> <p>The built form will positively contribute to the French Street streetscape, with an articulated façade and a compatible height and form.</p> <p>Overall, the altered dwelling will provide greatly improved housing conditions to accommodate a young family within a well-located and highly sought-after suburb.</p>
(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,	<p>The site is not located within a heritage conservation area or located near a heritage item.</p>
(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.	<p>The minor variation will not present any additional or increased bulk, privacy and amenity or overshadowing impacts on the neighbouring properties.</p> <p>The form and scale respond to the broader context of the site, and the low density residential form that is characterised by two to three storey dwellings along the western side of French Street.</p> <p>The variation to the height does not increase the</p>



Development Standard Objectives	Response
	<p>intensity of the development and will not give rise to significant adverse overshadowing.</p> <p>The proposed building and general massing site comfortably with the setting of the surrounding buildings.</p> <p>The extent of variation is appropriate in this instance as the proposal provides a well-articulated dwelling that is compatible with the local developments' height, context and character.</p>

### **Consistency with the Zone Objectives**

The site is located within the *R2 Low Density Residential* zone.

The R2 zone states:

#### **Zone R2 Low Density Residential**

##### **1 Objectives of zone**

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

##### **2 Permitted without consent**

*Home occupations; Recreation areas*

##### **3 Permitted with consent**

*Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Pond-based aquaculture; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Shops; Tank-based aquaculture*

##### **4 Prohibited**

*Funeral homes; Any other development not specified in Item 2 or 3*

The proposal is for alterations and additions to an existing dwelling and is permissible with consent.

The proposed building form is consistent with the objectives of the *R2 Low Density Residential* zone as outlined in the following table.

Zone Objectives	Response
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed development will maintain the density and capability of the site to support a family in a location in close proximity to a number of local services, recreational areas, schools and public transport corridors.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	This objective is not relevant as the proposed uses are for a dwelling house.
<i>To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.</i>	<p>The proposed development provides a positive response to the site's locational characteristics and will be a positive addition to and complements the existing character, height, bulk and scale of existing dwellings in the immediate vicinity.</p> <p>The dwelling is of an appropriate bulk, scale and appearance consistent with the general character of French Street and the R2 Low Density Residential zone in general.</p>
<i>To protect the amenity of residents.</i>	<p>The form and scale respond to the broader context of the site, and the low density residential form that is characterised by two to three storey dwellings along the western side of French Street.</p> <p>The variation to the height does not increase the intensity of the development and will not give rise to significant adverse overshadowing.</p>
<i>To encourage housing affordability.</i>	The proposed development will provide a new contemporary dwelling that provides improved housing for a growing population and demand for suburban Sydney residential accommodation.
<i>To enable small-scale business uses in existing commercial buildings.</i>	The proposal does not relate to an existing commercial building.

#### **6.4 4.6(3)(b): sufficient environmental planning grounds to justify the contravention**

The proposed alterations and additions to the existing are permissible within the R2 zone and is consistent with the zone objectives.

The proposal will result in an upgrade to the existing dwelling building and front façade, maintain the existing height, setbacks and general building envelope.

The design, front setback, citing of the dwelling and opportunity for more landscaping within the front setback will ensure that the existing low density residential and tree-lined streetscape will be maintained and improved.

The proposed built form is a well-considered response to the particular constraints of the site, in particular the site topography.

The existing and proposed height exceedance is for a small portion of the pitched roof at the front of the building and is the result of the existing steep site topography general pitched roof design.



The proposed development results in a building bulk and scale that is consistent with the desired outcome and objectives for the low density residential area and is similar to other recent developments in the locality.

Overall, the proposed height, building envelope and floor space is an appropriate correlation with the size of the site and the extent of the development as it is consistent with the overall building envelope and setbacks in the locality.

Allowing a variation to the height standard, in the context of this particular site, the existing height and building form and this particular design, would promote:

- the proper and orderly development of land; and
- good design and amenity of the built environment,

which are express objectives of the *Environmental Planning and Assessment Act 1979* (Section 1.3(c) and (g)).

#### **6.5 4.6(4)(a)(ii): the public interest**

Clause 4.6(4)(a)(ii) requires that consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development *"will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out"*.

The proposed development is consistent with the objectives of the height development standard, and the objectives of the zone, for the reasons discussed above.

#### **6.6 4.6(1): objectives of clause 4.6**

The proposed variation to the height standard, for the reasons explained above, is clearly consistent with the objectives of clause 4.6, which are:

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

#### **6.7 Secretary's Concurrence**

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) *the public benefit of maintaining the development standard, and*
- c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

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- The variation to the height development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- The proposed height facilitates a high-quality low-density development consistent with the area's planning objectives.
- The variation to the height does not increase the intensity of the development.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would result in the underutilisation of the existing floor area, which would be inconsistent with the surrounding developments and topography.

There are no other relevant matters required to be taken into account by the Secretary.

## Appendix 3: DCP Compliance Table

### 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 below.

*(Note: a number of control provisions that are not related to the proposal have been deliberately omitted)*

#### 3.1 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R2	
<b>2</b>	<b>Site planning</b>		
<b>2.3</b>	<b>Site coverage</b>		
	451 to 600 sqm = 50%	Site = 551sqm Proposed = 34%	Yes
<b>2.4</b>	<b>Landscaping and permeable surfaces</b>		
	i) 451 to 600 sqm = 30% ii) Deep soil minimum width 900mm. iii) Maximise permeable surfaces to front iv) Retain existing or replace mature native trees v) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. vi) Locating paved areas, underground services away from root zones.	Site = 551sqm Proposed = 35%	Yes
<b>2.5</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	451 to 600 sqm = 7m x 7m	Site = 551sqm Proposed = No change to the existing complying POS within the rear yard.	Yes
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = 0.65:1</b>	Site area = 551sqm Proposed FSR = 0.53:1	
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	Proposed = 10.55m	See Key Issues
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = up to 8.8m	See Key Issues
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b>		
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage:	No change to the existing front setback	N/A

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> <li>- 900mm for allotments with primary frontage width of less than 7m</li> <li>- 1500mm for all other sites</li> </ul> iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front		
3.3.2	<b>Side setbacks:</b> Dwellings: <ul style="list-style-type: none"> <li>• Frontage less than 9m = 900mm</li> <li>• Frontage b/w 9m and 12m = 900mm (Gnd &amp; 1<sup>st</sup> floor) 1500mm above</li> <li>• Frontage over 12m = 1200mm (Gnd &amp; 1<sup>st</sup> floor), 1800mm above.</li> </ul> Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 900mm Proposed = 1090mm and 1220mm, as existing and no change	Yes
3.3.3	<b>Rear setbacks</b> <ul style="list-style-type: none"> <li>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</li> <li>ii) Provide greater than aforementioned or demonstrate not required, having regard to:               <ul style="list-style-type: none"> <li>- Existing predominant rear setback line - reasonable view sharing (public and private)</li> <li>- protect the privacy and solar access</li> </ul> </li> </ul>	Minimum = 8m Proposed = 26m, as existing, no change	Yes
<b>4</b>	<b>Building design</b>		
<b>4.1</b>	<b>General</b>		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> <li>• articulated to enhance streetscape</li> <li>• stepping building on sloping site,</li> <li>• no side elevation greater than 12m</li> <li>• encourage innovative design</li> </ul>	The building design controls are complied with.	Yes
<b>4.4</b>	<b>Roof Design and Features</b>		
	<i>Rooftop terraces</i> <ul style="list-style-type: none"> <li>i) on stepped buildings only (not on uppermost or main roof)</li> <li>ii) above garages on sloping sites (where garage is on low side)</li> </ul> <i>Dormers</i> <ul style="list-style-type: none"> <li>iii) Dormer windows do not dominate</li> <li>iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof.</li> <li>v) Multiple dormers consistent</li> <li>vi) Suitable for existing</li> </ul> <i>Clerestory windows and skylights</i> <ul style="list-style-type: none"> <li>vii) Sympathetic to design of dwelling</li> </ul> <i>Mechanical equipment</i> <ul style="list-style-type: none"> <li>viii) Contained within roof form and not visible from street and surrounding properties.</li> </ul>	The existing roof form is maintained.	Yes
<b>4.5</b>	<b>Colours, Materials and Finishes</b>		
	<ul style="list-style-type: none"> <li>i) Schedule of materials and finishes</li> <li>ii) Finishing is durable and non-reflective.</li> <li>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage</li> </ul>	The nominated colours and finishes are satisfactory.	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>consideration)</p> <p>iv) Articulate and create visual interest by using combination of materials and finishes.</p> <p>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</p> <p>vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)</p>		
<b>4.6</b>	<b>Earthworks</b>		
	<p>i) Excavation and backfilling limited to 1m, unless gradient too steep</p> <p>ii) Minimum 900mm side and rear setback</p> <p>iii) Step retaining walls.</p> <p>iv) If site conditions require setbacks &lt; 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm.</p> <p>v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)</p> <p>vi) cut and fill for POS is terraced <i>where site has significant slope:</i></p> <p>vii) adopt a split-level design</p> <p>viii) Minimise height and extent of any exposed under-croft areas.</p>	<p>Excavation works for the new garage exceed the DCP controls.</p> <p>Specific conditions are included with respect to excavation and retaining to ensure the stability of the site and adjoining properties during and after building works.</p>	Yes
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	<p>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	The north facing windows and POS will maintain solar access in accordance with the DCP controls.	Yes
	<b>Solar access to neighbouring development:</b>		
	<p>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.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>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 &lt;6m above ground) of neighbouring dwellings.</p>	The amount of additional overshadowing to the adjoining properties is negligible and overall the proposal will remain compliant with the DCP solar access and overshadowing controls.	Yes
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> <li>• Skylights (ventilated)</li> </ul>	The alterations and additions to the dwelling will maintain light and ventilation throughout the dwelling.	Yes

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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> <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	A BASIX Certificate has been provided with the application.	
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> <li>- windows are offset or staggered</li> <li>- minimum 1600mm window sills</li> <li>- Install fixed and translucent glazing up to 1600mm minimum.</li> <li>- Install fixed privacy screens to windows.</li> <li>- Creating a recessed courtyard (minimum 3m x 2m).</li> </ul> <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p>Within the upper level north eastern elevation new windows W06, W24 and W25 to the stairwell, study and bedroom require modification to maintain privacy into the adjoining property.</p> <p>Within the south western elevation new windows W20 &amp; W28 to bathrooms require modification to maintain privacy into the adjoining property.</p>	Yes, subject to condition.
	<b>Balcony</b>		
	<p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	<p>The application details the enlargement of the existing rear balcony and a condition is included to require privacy screens to be fixed at both sides to maintain privacy into the adjoining properties.</p> <p>There is also an existing balcony to the front of the dwelling which is to be modified to include perimeter planting and planted screening. This dwelling as does the</p>	Yes

DCP Clause	Controls	Proposal	Compliance
		adjoining dwelling at No.24 has a large balcony at the front of the dwelling to capture the significant views across to Maroubra Beach and also being at the front of the dwelling privacy cannot be expected to be maintained. The alterations to the existing front balcony will not reduce privacy to the adjoining properties.	
<b>6</b>	<b>Car Parking and Access</b>		
<b>6.1</b>	<b>Location of Parking Facilities:</b>		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	A single vehicle access is provided.	Yes
<b>6.2</b>	<b>Parking Facilities forward of front façade alignment (if other options not available)</b>		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining	The proposal includes the construction of a large double garage to the front of the site. The existing single garage in this location is to be demolished.	See Key Issues.

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DCP Clause	Controls	Proposal	Compliance
	walls)		
<b>6.3</b>	<b>Setbacks of Parking Facilities</b>		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> <li>- nil side setback on adjoining property;</li> <li>- streetscape compatibility;</li> <li>- safe for drivers and pedestrians; and</li> <li>- Amalgamated driveway crossing</li> </ul>	There are no objections to the siting of the garage up to the street boundary.	See Key Issues.
<b>6.4</b>	<b>Driveway Configuration</b>		
	Maximum driveway width: <ul style="list-style-type: none"> <li>- Single driveway – 3m</li> <li>- Double driveway – 5m</li> </ul> Must taper driveway width at street boundary and at property boundary	Less than 5m	Yes
<b>6.5</b>	<b>Garage Configuration</b>		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> <li>- Single garage – 3m</li> <li>- Double garage – 6m</li> </ul> iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1		
<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) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	Masonry and timber	Yes
<b>7.2</b>	<b>Front Fencing</b>		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> <li>- 1800mm max. provided upper two-thirds partially open (30% min), except for piers.</li> </ul> ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> <li>- Site faces arterial road</li> <li>- Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment).</li> </ul> <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites	1800mm in height adjacent to garage wall and will not detract from the existing streetscape.	Yes

DCP Clause	Controls	Proposal	Compliance
	v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.		
<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.	1800mm maximum proposed.	Yes
<b>7.5</b>	<b>Swimming pools and Spas</b>		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	A swimming pool is proposed to be within the rear yard area sited 1200mm from the side and 15m from the rear boundaries.  The level of the swimming pool is consistent with the existing rear yard levels.  A condition of consent is included to require the pool plant and equipment being housed within a sound attenuating enclosure.	Yes

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**Responsible officer:** Perry Head, Environmental Planning Officer

**File Reference:** DA/111/2022

D68/22

## Development Consent Conditions (Dwellings and Dual Occupancies)



<b>Folder /DA No:</b>	DA/111/2022
<b>Property:</b>	22 French Street, MAROUBRA
<b>Proposal:</b>	Alterations and additions to the existing dwelling including internal and external modifications, new double garage, front fence, swimming pool, landscaping, tree removal and associated earthworks.
<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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations 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>
DA 1.0 Issue A	Nadine Nakache Design	10.11.21
DA 1.5 Issue A	Nadine Nakache Design	10.11.21
DA 1.6 Issue A	Nadine Nakache Design	10.11.21
DA 1.7 Issue A	Nadine Nakache Design	10.11.21
DA 1.8 Issue A	Nadine Nakache Design	10.11.21
DA 1.9 Issue A	Nadine Nakache Design	10.11.21
DA 2.0 Issue A	Nadine Nakache Design	10.11.21
DA 2.1 Issue A	Nadine Nakache Design	10.11.21
DA 2.2 Issue A	Nadine Nakache Design	10.11.21
DA 2.3 Issue A	Nadine Nakache Design	10.11.21
DA 2.4 Issue A	Nadine Nakache Design	10.11.21
DA 2.5 Issue A	Nadine Nakache Design	10.11.21
DA 2.6 Issue A	Nadine Nakache Design	10.11.21
DA 3.0 Issue A	Nadine Nakache Design	10.11.21
DA 3.1 Issue A	Nadine Nakache Design	10.11.21
DA 3.2 Issue A	Nadine Nakache Design	10.11.21

<b>BASIX Certificate No.</b>	<b>Dated</b>
A439826	16 <sup>th</sup> February 202



#### Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a. The following windows must have a minimum sill height of 1.6m above floor level, or alternatively, the windows are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
    - W06, W20, W24, W25 & W28.

#### REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a relevant 'Construction Certificate' is issued for the development by a Registered (Building) Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the relevant construction certificate.

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

#### Consent Requirements

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

#### Section 7.12 Development Contributions

4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$941 408 the following applicable monetary levy must be paid to Council: \$9 414.10.

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

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

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

Where:

**IDC** = the indexed development cost

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

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

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

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

**Long Service Levy Payments**

5. 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 and Assessment Act 1979*.

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

**Security Deposit**

6. The following damage / civil works security deposit requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A(6) of the *Environmental Planning and Assessment Act 1979*:

- \$2000.00 - Damage / Civil Works Security Deposit

The damage/civil works security deposit may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.

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

To obtain a refund of relevant deposits, a *Security Deposit Refund Form* is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.

**Design Alignment levels**

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

New Double Car Garage – RL 40.20m AHD

New Southern Pedestrian Entrance – RL 40.35m AHD

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

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

8. The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **\$172**. This amount is to be paid prior to a construction certificate being issued for the development.

**Stormwater Drainage**

9. Surface water/stormwater must be drained and discharged to the street gutter in front of the site to the satisfaction of the Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.

### Sydney Water

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

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

Sydney Water's Tap in™ online service is available at:  
<https://www.sydneywater.com.au/tapin>

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

### Street Tree Management

11. The applicant must submit a payment of **\$2,291.30** (GST inclusive) to cover the following costs:

- a) For Council to remove, stump-grind and dispose of the two *Agonis flexuosa* (Willow Myrtles) from the French Street verge, being **T1** to the south of the existing vehicle crossing, given its direct conflict with the new driveway and garage in this same location as shown, as well as **T2** towards the northern boundary, as it could not then be safely retained into the future in isolation due to being exposed to southerly storm winds, and would also be de-stabilised during removal/demolition of the existing vehicle crossing and any re-grading works performed in this area, hard up against its trunk;
- b) For Council to supply, plant and maintain 2 x 25 litre Tuckeroo's back on the French Street verge, being one each around each of the sites side boundaries upon the completion of all works;
- c) A loss of amenity fee in recognition that the only reason these established native trees are being removed from public property is to accommodate the development of private property, with this part of the fee to be directed towards additional public plantings elsewhere in the street and surrounding area.

This fee must be paid into **Tree Amenity Income** at the Cashier on the Ground Floor of the Administrative Centre **prior to a Construction Certificate being issued for the development.**

**The applicant must contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for their removal prior to the commencement of site works, as well as upon completion, to arrange for planting of the replacements.**

**After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's South Area Tree Preservation & Maintenance Coordinator on 9093-6964.**

**Protection of palms**

12. In order to ensure retention of the two *Archontophoenix cunninghamiana* (Bangalow Palms, T3-4) that are located in the rear setback of this site, in the existing raised planter beyond the rear of the existing dwelling & BBQ area in good health, the following measures are to be undertaken:
- a. All documentation submitted for the Construction Certificate application must show their retention, together with the position and diameter of their trunks, crowns, TPZ's and Tree Identification Numbers, as taken from the Arboricultural Report by Rainbow Tree Consultancy, dated 18/11/21 ('the *Arborist Report*') in relation to the works.
  - b. All Construction Certificate plans must show:
    - i. Existing ground levels, the pond as well as the planter walls to their east being retained in-situ and incorporated into the new works;
    - ii. All parts of the rear pergola/patio/awning, including wall alignment, post, gutter, fascia and similar being offset a minimum of **2 metres**, measured horizontally from their trunks at a height of 1 metre above ground level, with distances in millimetres confirming compliance to be included.
  - c. The Principal Certifier must ensure that the requirements of the **Tree Protection Plan, at Sections 10 -12 of the Arborist Report** are incorporated into all Construction Certificate documentation as well as be complied with on-site throughout the course of works.
  - d. Both palms must be physically protected (as one group) by the installation of 1.8 metre high steel mesh/chainwire fencing panels, to the extent shown on **Figure 4** (at page 5) of the Arborist Report, maintaining full access to the stairs to their north.
  - e. This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".
  - f. In order to prevent soil/sediment being washed over their root systems, erosion control measures must also be provided at ground level around the perimeter of the TPZ.
  - g. Within the TPZ, there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
  - h. Demolition/removal and re-construction of the garden/pool wall to their west must be performed under the direct supervision of a **Level 5 Consulting Arborist**, using hand-held tools, not machinery.
  - i. Where roots are encountered which are in direct conflict with the approved works, they may then be cut cleanly, by the Project Arborist, using only

hand-held tools, not machinery, with the affected areas to be backfilled with clean site soil.

- j. The Principal Certifier must ensure compliance with all of these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

**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 relevant construction certificate for the development.

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

**Building Code of Australia**

13. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).

Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.

**BASIX Requirements**

14. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 75 of the *Environmental Planning and Assessment Regulation 2021*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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

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

**Excavations & Support of Adjoining Land**

15. Details of proposed excavations and support of the adjoining land and buildings are to be prepared by a professional engineer and be included in the construction certificate, to the satisfaction of the appointed Certifier.
16. A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located on the adjoining land, to the satisfaction of the *Principal Certifier*:
- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or other building that is located on the adjoining land;
  - when undertaking demolition work to a wall of a dwelling or other substantial structure that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);



- when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land; and
- as otherwise may be required by the Certifier for the development.

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

#### **Stormwater Drainage**

17. 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;
  - d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
  - e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works;
  - f) A certificate or statement from a suitably qualified person must be submitted to the Principal Certifier and Council, prior to the issue of an Occupation Certificate, which confirms that the stormwater drainage system has been provided in accordance with the requirements of this consent, relevant standards and requirements.
18. Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the *Building Code of Australia* and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools). Details of compliance are to be provided in the Construction Certificate.

Temporary pool safety fencing is also required to be provided to swimming pools pending the completion of all building work and swimming pools must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.

*Note: This development consent does not approve the design and location of swimming/spa pool safety barriers. Swimming/spa pool safety barriers are required to comply with the Swimming Pools Act 1992, Swimming Pools Regulation 2018 and relevant Standards. Details of compliance are required to be included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development.*

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

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS**

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

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

**Building Certification & Associated Requirements**

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

**Home Building Act 1989**

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

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

**Construction Site Management Plan**

22. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles
- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- location and size of waste containers/bulk bins
- provisions for temporary stormwater drainage
- construction noise and vibration management
- construction traffic management details
- provisions for temporary sanitary facilities
- measures to be implemented to ensure public health and safety.

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

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

23. A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for *Managing Urban Stormwater – Soils and Construction*, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

**Demolition Work**

24. A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:

- a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.
- b) The Demolition Work Plan must include the following details (as applicable):
  - The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor
  - Details of hazardous materials in the building (including materials containing asbestos)
  - Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)

- Measures and processes to be implemented to ensure the health & safety of workers and community
- Measures to be implemented to minimise any airborne dust and asbestos
- Methods and location of disposal of any hazardous materials (including asbestos)
- Other measures to be implemented to ensure public health and safety
- Date the demolition works will commence/finish.

The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

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

**Notes:** *it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m<sup>2</sup> of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.*

*A copy of Council's Asbestos Policy is available on Council's web site at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.*

#### Public Utilities

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

#### 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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of public health, safety and environmental amenity during construction.

#### Site Signage

27. A sign must be installed in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
  - name, address, contractor licence number and telephone number of the principal building contractor, including a telephone number at which the person may be contacted outside working hours, or owner-builder permit details (as applicable)

- name, address and telephone number of the Principal Certifier,
- a statement stating that "unauthorised entry to the work site is prohibited".

#### Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<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>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm (maximum)</li> <li>• As may be further limited in Noise &amp; Vibration Management Plan</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.*

#### Construction Site Management

29. Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.

Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.

Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.

All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

#### Notes:

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

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



- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.
- g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

**Demolition Work & Removal of Asbestos Materials**

31. Demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m<sup>2</sup> of bonded asbestos (i.e. fibro),

- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works,

Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

A copy of Council's Asbestos Policy is available on Council's web site at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

#### **Excavations and Support of Adjoining Land**

32. The adjoining land and buildings located upon the adjoining land must be adequately supported at all times and in accordance with section 74 of the Environmental Planning and Assessment Regulation 2021 and approved structural engineering details.

Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

#### **Building Encroachments**

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

#### **Survey Report**

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

- prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,
- prior to construction (pouring of concrete) of new floor levels,
- prior to issuing an *Occupation Certificate*, and
- as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.

#### **Road / Asset Opening Permit**

35. A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.

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

**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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

**Occupation Certificate Requirements**

36. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

**BASIX Requirements & Certification**

37. In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that 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.

**Swimming Pool Safety**

38. Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).
39. A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the *Swimming Pools Regulation 2018*, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.
40. The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the *Swimming Pools Act 1992*. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website [www.swimmingpoolregister.nsw.gov.au](http://www.swimmingpoolregister.nsw.gov.au).

Registration must be made prior to the issue of an Occupation Certificate for the pool and a copy of the NSW Swimming Pool Certificate of Registration must be forwarded to the Principal Certifier and Council accordingly.

**Council's Infrastructure, Vehicular Crossings, street verge**

41. The applicant must meet the full cost for a Council approved contractor to:
- a) Reconstruct and extend the Council vehicular crossing and layback, as required, so as to meet the new double car garage slab level and to provide satisfactory vehicular access to it. The works are to be to Council's specifications and requirements.

42. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
43. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
  - Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
  - The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.
- Stormwater Drainage**
44. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.
- Project Arborist Certification**
45. Prior to any Occupation Certificate, the Project Arborist must submit to, and have approved by, the Principal Certifier, written certification which confirms compliance with the conditions of consent and Tree Protection in the Arborist Report, the dates of attendance and works performed/supervised relating to retention of **T3-4**.
46. That part of the nature-strip upon Council's footway which is damaged during works shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any 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 and Assessment Act 1979* and associated Environmental Planning

and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

**External Lighting**

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

**Plant & Equipment**

48. The operation of all plant and equipment (including air conditioners and pool pumps or other 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.

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## Development Application Report No. D69/22

**Subject:** 4/15 Barry Street, Clovelly (DA/100/2021)

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### Executive Summary

<b>Proposal:</b>	Regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio (Variation to FSR).
<b>Ward:</b>	North Ward
<b>Applicant:</b>	ASA Architects Pty Ltd
<b>Owner:</b>	Line of Designs
<b>Cost of works:</b>	Nil
<b>Reason for referral:</b>	The development contravenes the development standard for floor space ratio by more than 10%.

### Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/100/2021 for regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio , at No. 4/15 Barry Street, Clovelly, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Draft Conditions of Consent - 4-15 Barry Street Clovelly

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1. Executive summary

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

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

The proposal seeks development consent for the regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio, and change of use to the rooms the subject of the unauthorised works.

The key issues associated with the proposal relate to the variation to the FSR development standard, and the existing use rights pertaining to the site. The FSR variation can primarily be attributed to the existing development on site, and the nature of the development being a RFB within the R2 low density residential zone. The increase in GFA is approximately 3.7sqm, however is located within the existing building envelope and shall not attribute to the overall bulk and scale of the development, or result in any unreasonable amenity impacts upon adjoining properties or those properties within the existing development. Submissions were also received which raised concerns regarding the change of use of the lower ground floor area and the loss of communal storage. However, the application found that the subject areas legally form part of Unit 4 and therefore the proposed uses associated with the lower ground floor area would not warrant refusal of the application.

Assessment of the application has found that the proposed development shall not result in any unreasonable impacts upon the amenity of adjoining and surrounding properties subject to the recommendations within the report. The proposal is recommended for approval subject to non-standard conditions that require additional works to be undertaken by the Applicant with regards to drainage and compliance with the BCA and relevant standards.

## 2. Site Description and Locality

The site is known as 15 Barry Street, Clovelly and has a legal description of Strata Plan SP14396 and SP97056. The site is rectangular in shape and has a total area of 756.6m<sup>2</sup>. The site has a double street frontage, located on the eastern side of Barry Street and the western side of Barry Lane. Vehicular access is currently gained via the 19.02m wide frontage to Barry Lane. Pedestrian access is currently gained via the frontage to Barry Street and Barry Lane. The site experiences a fall of 4.32m from the front western boundary of the site towards the eastern rear boundary, with a slope of approximately 9.86%. The site is zoned R2 - Low Density Residential and is currently occupied by a three (3) storey Residential Flat Building with attic level, comprising eight (8) units and six (6) parking spaces to the rear.

The property is surrounded by residential properties to the north, south, east and west. Due to the low density zoning of the site and surrounding area, the area predominantly comprises dwelling houses and semi-detached dwellings, however there is a series of existing older style Residential Flat Buildings, including the subject site, along the eastern side of Barry Street and on the western side of Barry Street. The prevailing architectural style of the streetscape is a mixture of older style dwellings and the prevailing form of residential development in the surrounding area comprises of older style dwelling houses with pitched roofs, though a variety of architectural styles and some newer contemporary style dwellings also exist within the vicinity of the site.



Figure 1 – Street view of proposed development from Barry Street (*SEE – ABC Planning*).



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Figure 2 – Street view of proposed development from Barry Lane (*SEE – ABC Planning*).



Figure 3 – Common side access to Lower Ground Floor level (*SEE – ABC Planning*).



### 3. Relevant history

A search of Council's records did not reveal the original development consent for the existing flat building, however based on research it appears that the residential flat building was established between 1930 and 1942 (based on aerial photos). As a residential use, it is presumed to have been a continuous use since that time. The land has been used for residential purposes for an extended period of time.

#### DA/476/2016

Development Application DA/476/2021 for alterations and additions to the existing residential flat building including demolition of the existing garages, construction of 6 new garages fronting laneway, internal alterations, changes to some openings, new private and communal terraces at ground level and additional bedroom for Unit 4, new balconies for Units 5, 6, 7 and 8 at first floor and additional bedroom for Unit 7, new attic level comprising bedroom, ensuite and balconies for Units 5, 6, 7, and 8, new front fence, landscaping and associated works at the subject site was approved by Council on 24 November 2016.

A Construction Certificate for the development was issued on 21 March 2017 (CC/132/2017), with a Final Occupation Certificate for the development issued on 19 July 2018.

#### CDC/78/2018

Complying Development Certificate CDC/78/2018 for the strata subdivision of the development was approved by a Private Certifier on 9 April 2018. The approved Strata Subdivision Plan can be seen in Figure 6 below. The Basement Level is partially common property and partially located to Lot 12, being Unit 4 of 15 Barry Street.

#### July 2020

In response to a complaint received by Council regarding the use of the Lower Ground Floor level, Council's Regulatory Building Compliance department investigated the subject site and found that unauthorised works had been undertaken to the Lower Ground Floor level of the development, with particular regards to Unit 4. The works also involve unlawful use of the rooms within the Lower Ground Floor, in which no development consent had been granted. The approved floor plan provided for storage only on the Lower Ground Floor level, where the rooms were being used as bedrooms and a bathroom. As such, an Order was issued to the property owner of Unit 4 seeking that the living areas and bathroom created within the Lower Ground Floor level be demolished and removed, and the area converted back to its approved use as storage/services. Subsequently, as a result of the order issued, the subject development application was lodged seeking consent to regularise the unauthorised works and propose a formal change of use to the rooms to new uses.

#### Subject Development Application

The subject application was lodged with Council on 21 February 2021. The application was submitted in response to an investigation by Council's Compliance Unit as a result of a complaint regarding the unauthorised works and use of the Lower Ground Floor level. The investigation found that the Lower Ground Floor level of Unit 4 was being unlawfully used as bedrooms and a bathroom, in which development consent had not been granted.

The application was internally referred to Council's Heritage Planner, Coordinator – Compliance, and Development Engineer for comment and/or recommendations.

In response to concerns raised by Council regarding the change of use, a BCA report was submitted by the Applicant on 23 February 2022.

On 15 March 2022 a request for information was issued to the Applicant regarding the history of the development, specifically the strata subdivision of the proposal, including the inconsistencies with the approval by DA/476/2016, and the allocation of the storage areas to Unit 4. Discussions were had between Council and the Applicant who advised that the current owner did not own the property or engage the Private Certifier who issued the CDC for the strata subdivision and therefore further investigation regarding this would be sought.

On 27 May 2022, the Applicant provided a response to the RFI which included a letter from the Applicant's Solicitor outlining the outcome of the discussions with the Private Certifier and addressing the validity of the CDC.

#### 4. Proposal

The proposal seeks development consent for the regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio. The works to the lower ground floor level have already been carried out and as such are unauthorised. The subject application seeks consent for their use and proposes a change of use to the use of the subject rooms as specified below.

Specifically, the proposal seeks consent for use of the following:

- Change of use regarding the internal reconfiguration of Unit 4 on the Lower Ground Floor level;
- Increase in gross floor area by 3.7sqm;
- Internal modifications to the approved storage;
- Change to the use of the rooms to the following uses:
  - Gym;
  - Office;
  - Media room;
  - Bathroom; and
  - Private Storage;
- Modification to the approved staircase from the Ground Floor level to the Lower Ground Floor level.

#### 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. The following submissions were received as a result of the notification process:

- Unit 5/15 Barry Street

Issue	Comment
The application seeks to regularize the unapproved co-option of a 3.7sqm common storage area approved by the original DA, including access to the space making it only available to Unit 4. The original DA approved use of the storage space to be available for all units. The proposed development is contrary to the original development consent and strata law.	See Key Issues for further discussion regarding the common storage areas.
The application seeks to regularize the use of non-habitable rooms, however the existing and previous use of these rooms have been as bedrooms. Concerns regarding the change of use and whether the use will change.	The application proposes to change the use of the subject rooms from storage to a gym, office, media room and bathroom. No bedrooms are proposed, and as discussed within the Key Issues section, use of the areas as bedrooms would not be supported. The applicant has specified the proposed uses, and therefore any alternative use would be in breach of the development consent. Conditions of consent are recommended to ensure that the rooms are not utilised as bedrooms or for habitation.
The proposed uses do not meet BCA, ADG or fire requirements, nor does it address Council's planning guidelines.	See Key Issues for further discussion.

Issue	Comment
The application proposes to regularize the FSR by taking into account the unlawful co-opted common storage area, which should remain common space as per the original DA. The new uses are currently and will remain habitable and should be factored into the proposed FSR.	See Key Issues for further discussion regarding the co-opting of the common storage area.  See clause 4.6 assessment for consideration of the FSR variation.
Should Council approved the application, it is suggested the following conditions be imposed: <ul style="list-style-type: none"> <li>Return of the common storage space to common use and reinstatement of the approved common access from the building laneway.</li> <li>Reinstatement of the apartment to a 2 bedroom apartment, as per the original approval.</li> <li>No habitation of the lower basement which has not been designed or built to be habitable and does not meet BCA, ADG, fire regulations and planning controls.</li> <li>Rates to be applied as per the actual use and actual related FSR.</li> </ul>	See Key Issues for further discussion. As outlined, the subject storage area legally belongs to Unit 4 as a result of the strata subdivision of the building.  Unit 4 will be reinstated to a maximum of two (2) bedrooms.  The use of the lower ground floor rooms has been considered and a BCA report submitted which concludes that the proposed uses can achieve compliance with the BCA and any relevant standards. There are no specific requirements for ancillary type uses within the ADG, however it is noted that the proposal would not meet the requirements for bedrooms, hence these rooms are to be of a specialised nature and not used for extended periods of time.  The change to rates is a separate matter outwith this application.

- Unit 7/15 Barry Street

Issue	Comment
The application is not for regularisation of use but a new use unrelated to the existing unlawful uses as bedrooms and bathroom, and the approved use as storage.	The regularisation of the "use" identified in the SEE is in relation to the unauthorised works which have been undertaken, with the application seeking consent for the "use" of these works noting that retrospective approval cannot be granted. The application proposes new uses of the subject rooms as specified in the SEE and on the architectural plans, being a gym, office, media room, bathroom and storage.
The application seeks to legitimise Unit 4 taking over common storage space approved by the original DA, to the disadvantage of other owners.	See Key Issues for further discussion regarding the common storage areas.
The proposal does not comply with BCA, fire regulations or Council controls.	See Key Issues for further discussion.
The existing unlawful use impacts upon the amenity and privacy of the other apartments, and compromises access to storage spaces, and impacts on common services.	See existing use rights, clause 4.6 assessment and key issues for further discussion regarding amenity impacts upon neighbouring properties including those located within the building. The apartment will be retained as a two (2) bedroom apartment with no additional bedrooms authorised or supported.

- Unit 8/15 Barry Street

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Issue	Comment
<p>The proposal is not a regularization of the existing use.</p> <p>Approval of the application would regularize an unlawful intensification of use over and above the original approval.</p>	<p>The existing use rights provisions relate to the primary land use of the development as a Residential Flat Building which is prohibited in the R2 zone. The existing building relies on existing use rights to maintain its use as a RFB, which is consistent with the relevant existing use rights provisions. See detailed assessment of existing use rights further in report.</p> <p>The issues regarding the intensification of use of Unit 4, colonisation of the storage area, and adverse amenity impacts, are considered on merit further in the report.</p>
<p>The existing use right argument by the applicant is incorrect and cannot be relied upon.</p> <p>The colonisation of the strata storage space would not satisfy the definition of s4.11 as an existing use.</p> <p>The use of the strata storage space as bedrooms is in breach of the DA, building requirements and fire safety, and therefore the existing use is not for a lawful purpose.</p> <p>The applicant relies on the whole use of the building for the use of Unit 4.</p> <p>The applicant is seeking council to accept a double breach to the DA, and it was not a lawful use of the storage space.</p>	<p>The existing use rights provisions relate to the primary land use of the development as a Residential Flat Building which is prohibited in the R2 zone. The existing building relies on existing use rights to maintain its use as a RFB, which is consistent with the relevant existing use rights provisions. See detailed assessment of existing use rights further in report.</p>
<p>Unit 4 has taken over space that was allocated communal storage in DA/476/2016. The documentation incorrectly omits the common use of the storage.</p> <p>As a consequence of the loss of common storage, the building overall lacks storage.</p> <p>The use of garages as storage puts pressure on parking.</p> <p>Residents have to use the foyer area as storage space.</p>	<p>See Key Issues for further discussion regarding the common storage areas.</p>
<p><u>Conversion of Spaces</u></p> <p>Unit 4 has converted the storage areas to bedrooms.</p> <p>Since occupation, approximately 4-5 young persons have been living at the unit at any one time. Notes the demographic of the tenants, which differ from the families which live in the building.</p> <p>Ongoing adverse acoustic impacts.</p> <p>Unit was bought off the plan where Unit 4 was identified as 2 bedrooms. Increased bedrooms were not indicated.</p> <p>The increased occupancy results in insufficient waste facilities and storage.</p>	<p>The subject application seeks to change the use of the rooms to ancillary uses and therefore the apartment will be retained as a two (2) bedroom apartment with no additional bedrooms authorised or supported. As such, there shall be no increased demand on the waste facilities. Recommendations are made within the report with regards to the media room and gym to minimise noise impacts from these areas.</p> <p>The type and demographic of the tenants is not a planning consideration and is a civil matter that falls outwith the scope of the application.</p>

Issue	Comment
<p>The non-compliance became apparent as a result of Unit 4 seeking drainage to be fixed. In order for the rooms to be habitable, major drainage works would be required.</p>	<p>It is noted that drainage works as well as other construction works may be required to achieve compliance with the BCA and relevant standards. A condition of consent is imposed to ensure that the works are solely at the cost of the owner of Unit 4.</p>
<p><u>Possible response by Strata</u></p> <ul style="list-style-type: none"> <li>Option 1</li> </ul> <p>Preference is to refuse application and return storage to common space and enforce the original DA.</p> <p>Not ensuring enforcement of the original DA will require potential purchasers to add in an extra step when purchasing to compare building plans.</p> <p>Concerns regarding the continued use of the rooms as bedrooms as a result of the approval, which will require constant monitoring.</p> <p>There is a shortage of space in the block.</p> <ul style="list-style-type: none"> <li>Option 2</li> </ul> <p>The space is retained as storage for Unit 4.</p> <ul style="list-style-type: none"> <li>Option 3</li> </ul> <p>Approval of application</p> <ul style="list-style-type: none"> <li>Concerns regarding rewarding breaches of the DA.</li> <li>Works required to change the use to office and media room.</li> <li>Concerns regarding Unit 4 seeking strata to fix the drainage issues if consent is granted.</li> <li>DA would not satisfy internal amenity requirements because of ceiling heights and drainage problems.</li> <li>Concerns regarding cost of works as nil in relation to potential drainage works.</li> <li>Any approval would require detailed conditions to ensure change of use from bedrooms and drainage works.</li> <li>Changes to strata plans would be required.</li> </ul>	<p>See Key Issues for further discussion regarding the common storage areas.</p> <p>As discussed within the report, the use of the rooms as bedrooms is not supported and conditions of consent shall be imposed to ensure that Unit 4 is a maximum of 2 bedrooms. A condition shall also be imposed to ensure that the premises is not leased or advertised as more than 2 bedrooms.</p> <p>See Key Issues for further discussion of unauthorised works. As outlined above, a condition shall be imposed to ensure that any works to be undertaken are at the cost of the owner of Unit 4.</p> <p>As is demonstrated in the Key Issues section, no changes to the strata plan would be required as the existing strata plan is consistent with the proposed floor plans.</p>

- Executive Committee SP14396 for 15 Barry Street



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Issue	Comment
<p>Misrepresentations in the SEE</p> <ul style="list-style-type: none"> <li>○ The lower floor has already been unlawfully reconfigured into 3 bedrooms and a bathroom, leased as such since 2018, however was approved as storage space.</li> <li>○ Concerns regarding breach of BCA, fire regulations, DCP and LEP.</li> <li>○ The applicant has co-opted common space and removed access, while providing internal access from Unit 4, without Council or Strata approval.</li> <li>○ The use as 3 bedrooms impacts upon the privacy of the adjoining property at 17 Barry Street, and the additional occupants impact upon the amenity and enjoyment of residents of the subject site.</li> <li>○ The application for the individual land owner to take over space approved for common storage without Council or Strata approval will set an undesirable and unlawful precedent.</li> <li>○ The high density use of Unit 4 is out of character with the locality, and the existing building which is occupied by families. The use of Unit 4 has been managed similar to a boarding house.</li> <li>○ The units existing use due to number of bedrooms, is unlawful and the application misrepresents the existing use.</li> <li>○ The proposed uses constitute an intensification of use (approved as storage).</li> <li>○ The current unlawful use has resulted in documented adverse acoustic and amenity impacts upon the subject site and neighbouring properties.</li> <li>○ The additional occupants put pressure on services to the building, with particular regards to waste.</li> <li>○ The change of use detracts from surrounding developments and the character of the area.</li> <li>○ The application does not acknowledge of address the co-option of approved common storage area.</li> <li>○ The proposed development is an overdevelopment of the site, which breaches the FSR standard and fails to meet objectives for residential development.</li> </ul>	<p>See Key Issues and clause 4.6 assessment for further discussion of matters raised.</p> <p>The application is not seeking consent for the use of the areas as bedrooms, which would not be supported. The application has been assessed on the proposed uses.</p>
<p>Concerns regarding the actions of the Applicant to date, noting that the DA has arisen from a Council investigation and that the application does not seek to regularize the existing unlawful use which are misrepresented.</p>	<p>Noted.</p> <p>The subject application seeks to change the use of both the approved use and unlawful use as bedrooms, proposing ancillary/recreational rooms only. The subject application seeks to legitimise the unauthorised works that have been undertaken.</p>

Issue	Comment
The original approval permitted basement storage only, with allocation of common storage, which does not comply with BCA, fire regulations and planning requirements for habitable rooms. The original approval did not include the 3.7sqm space addressed in this application.	See Key Issues and clause 4.6 assessment for further discussion.
Since the OC was issued, the applicant has undertaken unauthorised works to convert the lower ground floor level to 3 bedrooms and a bathroom, which have been continually occupied, and leased as a 4 bedroom apartment.	As detailed in the Key Issues section, Council does not condone unauthorised works, however now that the application has been lodged it must be considered against the relevant planning provisions. No additional bedrooms are supported, and Unit 4 is to remain a two (2) bedroom apartment. A condition shall also be imposed to ensure that the premises is not leased or advertised as more than 2 bedrooms.
The applicant has without Council or Strata consent, co-opted the adjoining communal storage space, removed communal access and enabled internal access from Unit 4.	See Key Issues for further discussion regarding common storage area.
Breach of BCA and fire regulations <ul style="list-style-type: none"> <li>○ No Fire Safety Report has been submitted with the application.</li> <li>○ Concerns of risk to health and safety of occupants who occupy the non-habitable rooms, and to others in the building if a fire starts.</li> <li>○ The 3 bedrooms do not comply with the minimum ceiling heights, and are used as habitable spaces.</li> </ul>	See Key Issues for further discussion. As previously noted no additional bedrooms are proposed, the submitted BCA report is based on the proposed uses.
The loss of common storage space results in SP14396 failing to comply with the storage requirements under the ADG. Residents are forced to use garages as storage impacting upon off-street parking.	See Key Issues for further discussion. While it is recognised that the loss of storage shall be detrimental to other occupants, the subject area is owned and allocated to Unit 4.
RLEP 2012 <ul style="list-style-type: none"> <li>○ The FSR non-compliance is misleading as the existing lower ground level is being used as habitable space, resulting in additional GFA.</li> <li>○ The resulting FSR is excessive and unacceptable for the R2 zoned area with a maximum 0.5 FSR.</li> <li>○ The proposal is inconsistent with the FSR objectives: <ul style="list-style-type: none"> <li>- The proposal will have adverse impact upon adjoining apartments and surrounding properties.</li> <li>- The increase is not minor due to the habitable use of the spaces, and will detract from the local character.</li> <li>- The bedrooms and increased occupancy result in adverse privacy impacts.</li> </ul> </li> </ul>	See Key Issues and clause 4.6 assessment for further discussion

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Issue	Comment
<p>There are ongoing issues with stormwater management, and mould in the lower ground floor level rooms, presenting health and safety risks. The drainage is only approved for storage.</p> <p>Concerns regarding building works should further stormwater works be required.</p>	<p>It is noted that drainage works as well as other construction works may be required to achieve compliance with the BCA and relevant standards. A condition of consent is imposed to ensure that the works are solely at the cost of the owner of Unit 4.</p>
<p>RDGP 2013</p> <p>Concerns regarding non-compliance with privacy and fire safety.</p> <ul style="list-style-type: none"> <li>○ Regular complaints have been received regarding noise and anti-social behavior from the subject unit.</li> <li>○ The works do not comply with the BCA.</li> <li>○ The proposal will require additional works.</li> <li>○ The change of use results in adverse environmental impacts including privacy, noise and parking.</li> <li>○ The regularization of this use shall not be in the public interest as it does not make a positive contribution to the built and natural environment.</li> </ul>	<p>The reinstatement of the Unit to a maximum of two (2) bedrooms shall ensure that amenity and parking impacts associated with the use of the apartment are minimised. Recommendations are made with regards to the media room and gym for additional acoustic measures to minimise noise impacts.</p> <p>The proposal is considered to be in the public interest in that the development would be consistent with the objectives of the R2 zone, RLEP and RDGP.</p>
<p>Other Matters</p> <p>The applicant does not have the authority to submit the document entitled "remedial engineering report" as this was for information purposes only.</p> <p>The subject application was due to be lodged by Feb 2021 and was lodged late.</p> <p>Unit 4 has taken over common storage and services areas and converted them into bedrooms in breach of building laws.</p> <p>Unit 4 has shown a willingness to operate in a way that disadvantages strata as follows:</p> <ul style="list-style-type: none"> <li>• Strata rates are paid based on approved size rather than as exists;</li> <li>• Has had a large number of tenants;</li> <li>• Other owners bought with an understanding that Unit 4 would be 2 bedrooms with storage.</li> <li>• Has actively pursued strata to fix the drainage for the unauthorised cellar which will cost a great deal of money.</li> <li>• Concerns regarding the approval of the application and rewarding ongoing breaches in the planning process. Suggesting that due diligence when purchasing is not sufficient and that potential owners should compare building plans.</li> <li>• If Council approves the application, then it would require the strata plans to be changed.</li> </ul>	<p>The comment in relation to the engineering report is noted. However this is a civil matter.</p> <p>The late lodgement date was noted by Council's Compliance department who provided the timeframes for submission of the application, who will take appropriate action if required.</p> <p>See Key Issues for further discussion regarding the common storage areas.</p> <p>Strata rates are a matter outwith the scope of this application.</p> <p>Unit 4 shall be reinstated to a 2 bedroom apartment, with ancillary uses provided on the lower ground floor level.</p> <p>Any drainage works or other works associated with the proposed development shall be at the cost of the owner of Unit 4 only.</p> <p>See Key Issues for further discussion regarding the unauthorised works and planning process.</p> <p>The issue in relation to the storage areas arose as a result of the strata subdivision of the building.</p>

Issue	Comment
Should Council approve the application, the following is requested: No habitation of the sub-basement area. Return of the common storage area to the building overall.	See Key Issues for further discussion regarding the common storage areas. As discussed within the report, the use of the rooms as bedrooms is not supported and conditions of consent shall be imposed to ensure that Unit 4 is a maximum of 2 bedrooms. The assessment has been based on the ancillary uses of the rooms which shall not be frequented for extended periods of time, and therefore are acceptable. The proposed uses would be similar to that found in the basement of residential dwellings.

- 17 Barry Street

Issue	Comment
Concerns regarding increased noise impacts caused by the current occupation of the rooms, and the impacts as a result of approving the 3 rooms which will be used as bedrooms.	See Key Issues for further discussion. Unit 4 shall be reinstated to a 2 bedroom apartment, and additional acoustic measures to windows are recommended to the gym and media room to minimise noise impacts upon the adjoining property. No additional bedrooms are authorised or supported.

- Unknown Address

Issue	Comment
<u>Use and SEE</u> Unit 4 is currently leased as a 4 bedroom apartment. Change to the use would result in a substantial decrease in rental income. The FSR is larger than the applicant represents, as the rooms are occupied as habitable space. The proposed regularization shall have adverse impacts with regards to overlooking to No. 17, noise impacts from number of occupants, services unable to cope with demand of increased occupants resulting in overflowing bins and vermin. The higher density of Unit 4 is out of character with the locality.	Noted, however the application seeks consent for the new uses and not bedrooms. See Key Issues for further discussion.
Non-compliance with SEPP 65 ceiling heights due to the likely continued use of the rooms as bedrooms.	The use of the rooms as bedrooms is not supported for this reason and due to poor internal amenity. No additional bedrooms are proposed or approved. The use of the rooms as bedrooms would be in breach of the development consent and appropriate action can be taken.
The change of use is inconsistent with the low density character of the area, and generates unreasonable amenity impacts upon neighbours.	See Key Issues and clause 4.6 assessment for further discussion.
The loss of amenity in relation to visual and acoustic privacy is inconsistent with RDCP 2013.	See Key Issues for further discussion.

Issue	Comment
It would not be in the public interest due to negative impacts with regards to loss of privacy, noise and parking.	The proposal is considered to be in the public interest in that the development would be consistent with the objectives of the R2 zone, RLEP and RDCP.

## 6. Relevant Environment Planning Instruments

### 6.1. State Environmental Planning Policy 65 - Design Quality of Residential Apartment Developments

The proposed development involves minor alterations and additions to the existing Residential Flat Building and proposes a change of use of the rooms located on the Lower Ground Floor level to a gym, office, media room, bathroom and storage. The proposed development shall not alter the overall approved built form, with the works confined to Unit 4 only at the Lower Ground Floor level. It should be noted that the rooms are not to be utilised as bedrooms, and are ancillary and recreation uses that would generally not be occupied for extended periods of time. The proposed uses shall improve the amenity of the individual unit. Furthermore, the use of the rooms as bedrooms would be non-compliant with several provisions of the ADG and result in poor amenity for occupants, and therefore is not supported. Given the minor nature of the works which are contained within the existing building envelope, the proposed development is not considered to constitute the substantial redevelopment or substantial refurbishment of the existing building and therefore, SEPP 65 is not applicable in this instance. Notwithstanding, the proposed alterations shall provide better amenity for occupants and would be consistent with the design quality principals set out in Schedule 1 of SEPP 65, provided the rooms are utilised for their intended purpose of ancillary areas.

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

The subject site is zoned R2 Low Density Residential as identified on the Land Zoning Map of RLEP 2012. The existing building on the subject site is defined as a Residential Flat Building. Pursuant to the Land Use Table in Part 2 of RLEP 2012, a "residential flat building" is a prohibited use in the R2 zone.

The Applicant claims that the site benefits from existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979. Section 4.65 of Division 4.11 requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Furthermore, under Section 4.66, the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months.

A search of Council's records revealed that the existing development has been subject to a development approval in 2016, being Development Application DA/476/2016 for alterations and additions to the existing RFB in which it was established that existing use rights applied to the site. There is no evidence to suggest that the approved use has been discontinued for any period of over 12 months since its commencement.

In view of the above, it is considered that existing use rights pertain to the site under Part 4, Division 4.11 of the EP&A Act and Part 7 of the EP&A Regulation 2021, and the subject application therefore may be considered and determined under the "existing use" provisions. See Key Issues for detailed existing use rights assessment.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the continued use of the site as a residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
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CI 4.4: Floor space ratio (max)	0.5:1	1.205:1 (previous approved FSR is 1.2:1 under DA/476/2016)	No
CI 4.3: Building height (max)	9.5m	All works are located at the Lower Ground Floor and Ground Floor level and the existing building height shall not be altered as a result of the proposed works.	N/A

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

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

#### 6.2.2. Clause 5.10 - Heritage conservation

The subject site is not identified as a heritage item nor within a Heritage Conservation Area, however the site is located adjacent to and in close proximity to several heritage items located at No.s 6, 16 and 18 Barry Street.

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes objectives of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views. Clause 5.10 also requires Council to consider development on land within the vicinity of heritage items to assess the impact on the heritage significance of the heritage item.

The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties and developments within the vicinity of heritage items. As such, the application was referred to Council's Heritage Planner who raised no objection to the proposed development. See detailed comments in Appendix 1.

### 7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.5	1.205:1 or 911.62m	533.32m <sup>2</sup>	140.9%

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

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*

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- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

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

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

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

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

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

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

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

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

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

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

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

The applicant's written request seeks to justify the contravention of the FSR development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the FSR variation shall be indiscernible from the streetscapes and neighbouring properties, the overall bulk and scale are retained as approved, the additional GFA relates to the storage area minimising impacts, and that the relevant objectives of the standard are still achieved.

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the minor increase of GFA does not affect the size and scale of the approved RFB. Due to the location of the increased FSR within the buildings footprint, the additional FSR will be indiscernible from the surrounding properties and public domain. The proposed FSR relates to a storage area and will not intensify or compromise the future character of the locality.

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

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The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed minor increase do not alter the approved built form and overall architectural design of the building.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the additional FSR will be indiscernible from the surrounding properties and public domain and shall not impact upon the nearby heritage items.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the additional floor space is contained within the approved building envelope, and there shall be no increase to the building height. As such no visual bulk or overshadowing impacts are expected, and the FSR variation is not related to any view loss. The increased floor area is proposed as storage, combined with limited openings, ensures no unreasonable impacts upon privacy.

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

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

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

- The minor 0.005:1 FSR variation will be discernible from the streetscapes and neighbouring properties.
- The proposed additional FSR does not result in any increased building height, and the overall bulk and scale are retained as approved.
- The proposed FSR deviation is limited within the building footprint and approved envelope. The additional floor area does not alter the approved built form.
- The proposed GFA is incorporated into the private area of Unit 4 and shall not impact upon adjoining apartments.
- The proposed increased FSR shall not cause any unreasonable privacy, overshadowing, view loss or visual bulk impacts.
- The FSR variation is well integrated into the high-quality approved development and the built form shall be retained with no significant variation.

Assessing officer's comment:

The variation to the FSR standard can be attributed to the land use of the development, being a medium density development within a R2 low density zone, and the existing use rights pertaining to the site. Furthermore, the FSR is a result of the existing building on site, with a substantial variation to the FSR approved at 1.2:1 in the previous development consent in 2016. It should be noted that the existing FSR of 1.2:1 was considered appropriate in the circumstances and a variation to the standard approved. The minor increase to the FSR to 1.205:1 will not result in any change to the external appearance of the building, nor any visible change as viewed from the other apartments within the building, noting that the increased floor area is internal to Unit 4. The increased FSR is primarily a result of the as-built Lower Ground Floor level which results in a slight variation to the approved floor plan, and the location and configuring of the internal access stairs for Unit 4. In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

To determine whether the proposal will be in the public interest, consideration is given to the objectives of the Floor Space Ratio standard and R2 zone.

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R2 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.4 Floor Space Ratio, subject to the recommendations within the report. Therefore the development will be in the public interest.

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

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

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

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

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

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

#### Conclusion

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

#### 8. Development control plans and policies

##### 8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in the Key Issues section.

#### 9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>While the RFB use is prohibited within the R2 zone, the proposal is still considered to be consistent with the general aims of RLEP 2012 and the specific objectives of the R2 zone in that the proposed activity and built form shall not compromise the aesthetic character of the streetscape, or the environmental qualities and social amenity of the locality. Furthermore, the impacts of the proposal upon the amenity of neighbouring land is not considered to be unreasonable.</p> <p>See discussion in sections 6 &amp; 7 and key issues below.</p>



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Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

## 9.1. Discussion of key issues

### Existing Use Rights

Section 4.65 of Division 4.11 of the *Environmental Planning and Assessment Act 1979* requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Based on a search of past approvals, the existing building is considered to have been constructed between 1930 and 1942, with a RFB having been on the site for an extended period of time. An application in 2016 approved alterations and additions to the existing RFB, confirming the ongoing use of the development as a RFB. Therefore it is considered that the use of the building was lawfully granted and in existence prior to the implementation of RLEP 2012.

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the “incorporated provisions” of the Act would have no force or effect. It should be noted that derogation from the incorporated provisions has also been considered in recent caselaw with regards to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 in which it was determined that the provisions of a LEP do not necessarily derogate from the incorporated provisions of the EP&A Regs and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of a LEP. In this instance (and adopting

the Commissioner's findings in the above LEC matters), it is considered that the provisions of clause 4.4 read in conjunction with clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions, and that an assessment of the development in accordance with s4.15 of the EP&A Act should be undertaken. Furthermore, as the provisions of clause 4.4 are applicable, and the Applicant seeks to vary the FSR, a clause 4.6 request is required. The Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council, 2005*) which establishes criteria for the assessment of proposals on land with existing use rights. As such, the proposal has been assessed against the relevant provisions of RLEP 2012 and RDCP 2013 as well as the planning principal.

Assessment against the planning principal is provided below:

#### Planning Principal 1

##### ***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.*

The subject site is located within the R2 – Low Density Residential zoning, with the adjoining and adjacent properties within the surrounding area primarily low density developments in the form of dwelling houses and semi-detached dwellings. However, Barry Street provides a mixture of low density and medium density developments, with particular regards to the existing RFBs at 9, 11 and 11A Barry Street which are non-conforming uses. The existing RFBs within the street vary in height from two (2) to four (4) storeys.

The existing FSR of the building exceeds the permitted 0.5:1, being 1.2:1. The proposed works shall result in a minor increase to the approved FSR to 1.205:1 or an additional 3.7m<sup>2</sup>. The proposed works are also confined to the Lower Ground Floor level and within the existing overall building footprint, and therefore the proposal shall not alter the overall bulk and scale of the development, nor result in any adverse visual impact. The existing built form was deemed to be compatible with the surrounding bulk and scale, with the building being two(2)-three(3) storeys with attic level. The proposed development does not alter the maximum height of the building, or the approved site coverage and landscaping on the site. While it is acknowledged that the proposed development would significantly exceed the FSR and height provisions of the R2 – Low Density zone, given the context of the existing area, the bulk and scale of the proposal is not considered to be incompatible with the existing streetscape or the character of the local area within the immediate vicinity.

In view of the above, and subject to the recommendations, the bulk and scale of the proposed development is supportable when considered in the context of the site and surrounds.

#### Planning Principal 2

##### ***What is the relevance of the building in which the existing use takes place?***

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.*

The proposed development does not involve a change of use to the existing development. The proposed development seeks to improve the amenity of the existing Unit 4 by providing additional recreational and study areas within the Lower Ground Floor level. As discussed further in the report, there shall be no increase to the number of bedrooms within the apartment which shall be limited to a maximum of two (2) bedrooms.

Planning Principal 3***What are the impacts on adjoining land?***

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Concerns have been raised in a submission regarding the adverse privacy impacts of the proposed development upon the adjoining properties, with particular regards to visual and acoustic privacy, and detrimental impacts upon other owners due to loss of storage and inadequate waste provisions to accommodate additional occupants.

Visual Privacy

The change of use to the rooms within the Lower Ground Floor level has necessitated the need for additional window openings on the southern elevation, and each of the following rooms are provided with a window:

- Gym;
- Office;
- Bathroom;
- Media Room.

The existing windows have a sill height of 1.3m above the finished floor level, with the bathroom window provided with obscure glazing. It is noted that the BCA report requires the windows to be increased in size in relation to ventilation and light requirements. As the proposed windows are located at ground level adjacent to the boundary fencing, it is not considered that the proposed change of use shall result in any unreasonable overlooking impacts, however it was apparent at the site visit that views over the fence may occur. Furthermore, the proposed rooms are located adjacent to a common walkway and therefore there is the capacity to look directly into the proposed development. As such, it is recommended that privacy measures be installed to the subject windows to ensure no adverse privacy impacts upon the proposed development or the adjoining property.

Acoustic Privacy

It is considered that the proposed change of use of the rooms shall have an adverse impact upon the acoustic privacy of the adjoining properties. While the proposed rooms shall not be utilised for any extended period of time given the nature of the rooms, the proposed uses of the media room and the gym shall be high noise areas. In order to ensure no adverse acoustic impacts upon the adjoining properties, it is recommended that the gym and media room have windows that are fixed and non-openable, with acoustic measures provided to the windows to mitigate noise impacts. Alternative ventilation methods will also be required for these areas, and a condition of consent shall be imposed accordingly. It should be noted that the proposed gym and media room uses are not dissimilar to that which would be found in a basement of a dwelling house or the like, and therefore removal of the openable windows is not considered unwarranted or unreasonable.

Solar Access and View Loss

Due to the proposed works not extending outwith the approved building envelope, the proposal shall not impact upon solar access to adjoining properties or result in any view loss impacts.

Loss of Storage

The loss of storage is addressed in detail further in the report.

Waste Provisions

While it is acknowledged that the previous unauthorised use of the rooms within the Lower Ground Floor level were bedrooms, the Applicant is seeking to change the use of these areas to recreational areas and an office. As discussed below, the use of the Lower Ground Floor level as bedrooms is not supported as it provides poor amenity for occupants and fails to comply with the provisions of the ADG. As such, Unit 4 shall remain a two (2) bedroom apartment. Conditions of consent shall be imposed to enforce the use of the Lower Ground Floor rooms, and ensure that they are not utilised as bedrooms or for any habitation. In view of the retention of the approved number of bedrooms, it

is considered that the proposed rooms shall not generate any additional waste demand to that which is approved.

#### Planning Principal 4

##### ***What is the internal amenity?***

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

The proposed development shall provide increased amenity for occupants of the development by facilitating additional recreational uses for the existing apartment. Notwithstanding, it should be noted that the use of the proposed rooms as bedrooms would NOT be supported for the following reasons:

- The proposed bedrooms would not comply with the minimum ceiling heights specified in the ADG of 2.7m;
- Due to the need to provide fixed windows to mitigate acoustic impacts, the bedrooms would not be able to facilitate a window opening to an external wall in contradiction to the requirements of Objective 4D-1 of the ADG;
- The bedrooms would not comply with the minimum dimensions and size specified in Objective 4D-3 of the ADG;
- The bedrooms would not receive any direct solar access resulting in poor amenity to the rooms;
- The bedrooms would be located adjacent to a common pedestrian access path resulting in unreasonable acoustic privacy for the proposed development;
- The increased density at the building, which would permit 5 bedrooms, would result in adverse impacts upon the residential amenity of the other occupants of the building;
- The waste facilities for the development are not adequate to accommodate additional occupancy levels;
- The additional bedrooms would generate additional parking demand which cannot be accommodated on site, resulting in adverse impacts upon the surrounding on-street parking.

However, given that the proposed uses are primarily recreational that will not be utilised for any extended periods of time, and do not require natural light and ventilation, the proposed uses can be supported in this instance.

Based on the above existing use rights assessment, and subject to the recommendations within the report, the proposal is considered reasonable.

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

Concerns have been raised regarding the increased GFA and subsequent FSR as a result of the unauthorised works that have been undertaken to the Lower Ground Floor level. The submissions also raise concerns regarding the Applicant's presentation of the FSR, noting that the subject area has been changed to habitable spaces from storage and therefore the FSR variation is greater than anticipated.

The Lower Ground Floor level would not be defined as "basement" pursuant to the Dictionary of RLEP 2012, with the exception of the very most eastern storage/service area to the east of the Garbage room. As such, while the Lower Ground Floor level comprises storage and garbage areas, these areas were included in the GFA calculation of the original assessment. See extract below from the Area calculations plan submitted with Development Application DA/476/2016, with the hashed area identifying areas of GFA.

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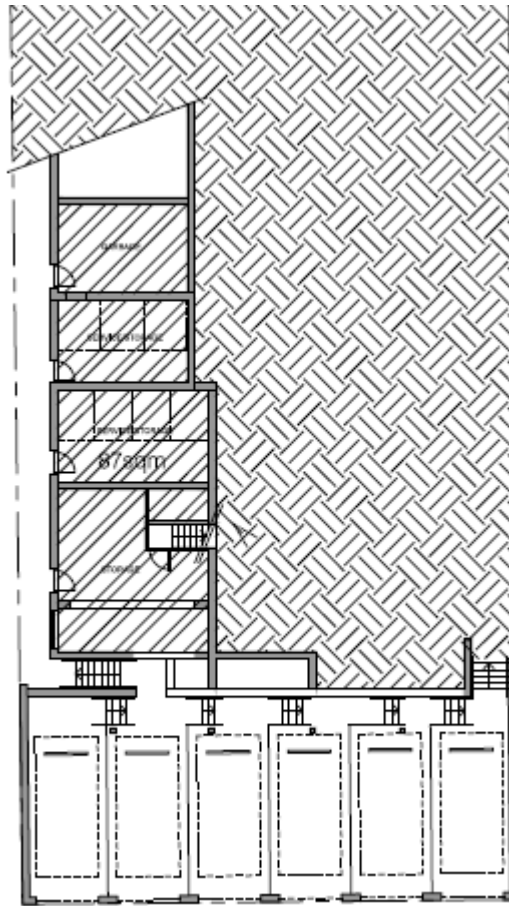


Figure 4 – Area of GFA calculated in Development Application DA/476/2016

As such, the change of use results in additional GFA of 3.7m<sup>2</sup> due to the location of the as-built external walls (which vary from the approved plans) and the reconfiguration of the Lower Ground Floor level. The proposed development shall have a Floor Space Ratio of 1.205:1 or a GFA of 911.62m<sup>2</sup>. The development under DA/476/2016 approved a FSR of 1.2:1, with a GFA of 907.92m<sup>2</sup>. The proposed development shall result in an increase to the approved FSR of 0.4%.

The Floor Space Ratio Map pursuant to clause 4.4(2) identifies that the proposed maximum FSR for the development is 0.5:1 and the proposed development is numerically non-compliant with the development standard. As such, quantitatively, the Applicant seeks to vary the development standard by approximately 140.9% and a Clause 4.6 exception to vary the development standard is required. See assessment of Clause 4.6 in relation to the contravention of the maximum FSR under Section 3 of the report.

### **Unauthorised Works**

Concerns have been raised in submissions regarding the unauthorised works and unlawful use that have occurred at the subject site, being the use of the approved storage areas at the Lower Ground Floor level as habitable spaces, and the internal alterations which involve reconfiguration of the internal floor layout and removal of external access to one of the storage spaces. The submissions include concerns regarding the approval process and endorsing unauthorised works and use of the space which have been undertaken illegally, and the implications should the application be approved.

Council does not condone unauthorised works, which is investigated separately by Council's Regulatory team. Notwithstanding, Council must carry out an assessment of the proposed development against the relevant provisions of the EP&A Act, EP&A Regs, RLEP 2012 and RDCP 2013 to determine whether the unauthorised works / proposed use would be consistent with the objectives of the relevant planning controls. If the resultant development is found to be consistent with the provisions of RLEP 2012 and RDCP 2013, despite the works being undertaken illegally,



Council would be in a position to support the proposal. Notwithstanding, should the application be approved, it is recommended that a Building Information Certificate be obtained to regularise any physical works that have been undertaken without approval.

### **Use of the Lower Ground Floor level, including Future Use**

Concerns were raised in submissions regarding the future use of the Lower Ground Floor level, given the existing use as bedrooms, and the adverse impacts associated with the increase in occupancy if the bedroom uses were to continue and be maintained.

While the previous unlawful use of the Lower Ground Floor level for bedrooms is acknowledged, under the subject application the Applicant is seeking consent to formally change the use of the rooms within the Lower Ground Floor area to comprise a gym, office, media room, storage area and bathroom.

Council must assess the development application based on the proposed uses as specified in the application, being gym, office, media room, storage and bathroom. As discussed in the report, the use of the Lower Ground Floor level as bedrooms is not supported as it does not provide adequate amenity. Should the application be approved, any alternative uses (with particular regards to a use of these areas as bedrooms) would be in breach of the development consent. Should the application be approved, appropriate conditions of consent have been recommended to ensure that the Lower Ground Floor level is never to contain any bedrooms, and the subject rooms are not to be used for habitable purposes or for any extended period of time.

### **Loss of Communal Storage**

One of the primary objections to the proposed development, as documented in the submissions received, is the loss of communal storage space as a result of the proposed works and change of use. The submissions raise concerns with the unlawful adoption of the common storage for private use by Unit 4, including the removal of the common external access to this space, and the change of use from storage to a gym area or bedroom. The submissions note that the subject application seeks to legitimise Unit 4 taking over the common storage area approved by the original development application (DA/476/2016), to the disadvantage of other owners/occupants within the building. The submissions also note that the building lacks storage and therefore the loss of the common storage area shall have detrimental impact upon the occupants of the building and results in failure to comply with the provisions of the ADG.

In view of the submissions received, the original application was reviewed and considered in detail. The original works to the Lower Ground Floor level (including the reconfiguration and new storage areas) was approved under DA/476/2016. The approved plans identify three (3) storage areas and one (1) private storage area specifically for Unit 4 as well as a waste and recycling room. For reference, the approved Lower Ground Floor level plan under DA/476/2016 is provided below:

NEW ENTRY TO LOWER GROUND WASTE STORAGE

ENCLOSE EXISTING COURTYARD TO FORM NEW STORAGE AREA

RECONFIGURE UNDERCROFT SPACES FOR SERVICES AND ADDITIONAL APARTMENT STORAGE

RECONFIGURE UNDERCROFT SPACES FOR SERVICES AND ADDITIONAL APARTMENT STORAGE

FIRE RATED WINDOWS

ALL NEW AND EXISTING DOORS TO BE FIRE RATED DOORS (FRL 120/120/60) WITH SELF CLOSERS

FIRE RATED WALL (FRL 120/120/60)

ACCESS TO COMMUNAL TERRACE ABOVE

OPEN VOID ABOVE - LIGHT AND VENTILATION

NEW STAIRS TO COMPLY WITH AS4424.1 WITH HANDRAILS BOTH SIDES, TREADS TOP AND BOTTOM, CONTRAST STRIPS AND NON-SLIP NOSING

SKYLIGHTS ABOVE

2.3m WIDE GARAGE ENTRY TO ACCOMMODATE TURNING OFF NARROW LANEWAY - TO TRAFFIC ENGINEER'S DETAILS

LANE

PROPOSED BASEMENT/GARAGE FLOOR  
1:100@A1

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It is unclear in the approved architectural plans and in the original assessment report whether all the areas marked as “store/service” areas were considered as common storage areas. Furthermore, it is noted that there was no condition within the original development consent with regards to the allocation of the storage areas and whether the subject areas were to be common. However, based on the documentation provided with application DA/476/2016 and the assessment report, it is considered that communal storage areas within the basement were to service all apartments, with Unit 4 specifically having a private additional storage area, as identified on the above plan. This is documented in the assessment and the application documents, including in the SEE which states that new private storage facilities for the dwellings are provided (within the lower ground floor/basement level) and that “*secure storage rooms are provided for each apartment within the basement*”, and also within the SEPP 65 statement which accompanied the development application, in which it states that the lower ground floor/basement level provides additional storage for each of the apartments to ensure compliance with the minimum requirements.

In this regard, the provision of storage is a requirement under clause 7.6 of Part C2 of RDCP 2013, SEPP 65 and the Apartment Design Guide, which specifies minimum storage requirements for apartments, and therefore the application was approved on the basis that storage facilities for all apartments were provided within the individual dwellings and within the basement.

A search of Council's records revealed that the Strata Subdivision of the RFB was approved under a private Complying Development Certificate on 9 April 2018, which references the approval in accordance with development consent DA/476/2016. Subsequently the Subdivision Certificate in relation to the approved strata subdivision was then issued. The approved Strata Subdivision plan appears to differ from the approved plans under DA/476/2016 in that the common storage spaces have not been identified as common property and have been allocated to Unit 4 (which is consistent with the area identified in the recent architectural plans under the subject DA). A copy of the approved (and current) strata plan is provided below:

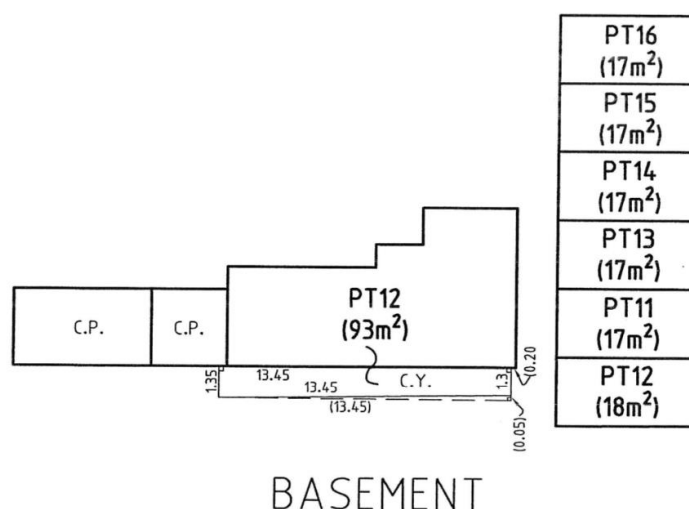


Figure 6 – Basement level Strata Plan for the subject site.

In view of the discrepancies between the approved plans under DA/476/2016 and the strata plan, additional information was requested from the Applicant regarding the discrepancy, including the history of the development and the issuing of the strata subdivision complying development certificate.

A response was received from the Applicant's Solicitor in which they had undertaken an investigation of the strata subdivision of the building, including a review of the consent under DA/476/2016, review of the CDC for the strata subdivision (CDC/78/2018), and discussions with the Certifying Authority of the CDC, Mr Ian Baker. The Applicant's legal advice is summarised below:

- Mr Baker's position is that the CDC is valid and can lawfully approve a strata plan that is substantially in accordance with the plans approved by DA/476/2016. It is considered that

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the strata plan approved by complying development certificate CDC/78/2018 is substantially in accordance with the plans approved by DA/476/2016.

- The CDC was issued pursuant to Part 6 of SEPP Exempt and Complying Development Code. The CDC was issued within 5 years of the development consent for the development and thus the provisions of clause 6.1 are met.
- Clause 6.2 establishes the development standards for strata subdivision and requires consideration of development consent DA/476/2016 in that the subdivision must not contravene any conditions of development consent DA/476/2016.
- None of the conditions of consent relate to or regulate the subdivision (as no subdivision was proposed under DA/476/2016).
- It could be argued that condition 1 of the development consent imposes a requirement that any future strata subdivision of the approved RFB must be "substantially in accordance with the plans and supporting documentation". It is noted that the subdivision code does not require the strata subdivision to be identical to the approved plans, and therefore there is a scope for a degree of variation between the DA approved plans and the strata subdivision plan.
- The Applicant considers that the degree of variation is minor in the context of the development as a whole.
- The advice notes that the floor plan does not include any indication of whether the storage/service rooms are common property or part of an individual lot. The 'storage/service' rooms are unallocated and it is open for the rooms to be allocated as either common property or part of an individual lot. The approved strata plan SP97056 is not inconsistent with the approved plans and has allocated the storage rooms to the Applicant's lot. The waste and recycling and rear storage room have been allocated as common area by strata plan SP97056.
- In view of the above, the strata plan approved by the CDC meets the requirements of the Subdivision Code under the SEPP.

The advice also notes that as the CDC was issued over 4 years ago, the Court does not have the power under section 4.31 of the EP&A Act 1979 to declare the CDC invalid (which must be brought within 3 months after the issue of the CDC). As such, the Applicant does not propose to challenge the validity of the CDC or strata plan SP97056, and proposes to rely on SP97056 to determine the legal dimensions of the lot the subject of the development application.

The Applicant provided an overlay of the strata plan and the proposed Lower Ground Floor level plan as submitted with the subject application which is provided below.



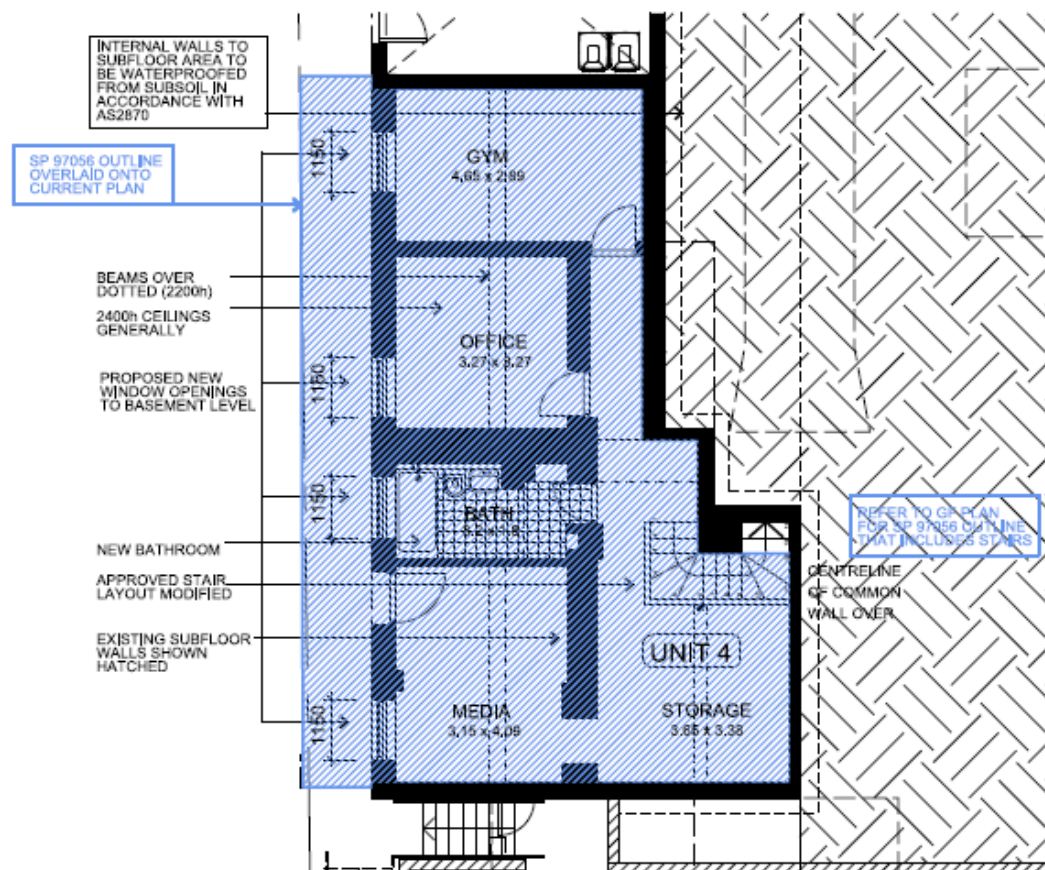


Figure 7 – Proposed Lower Ground Floor level with strata plan overlay in blue

The discrepancies between the approved plan and the proposed plan are also identified in Figure 8 below, with the proposed highlighted in black and approved in red:

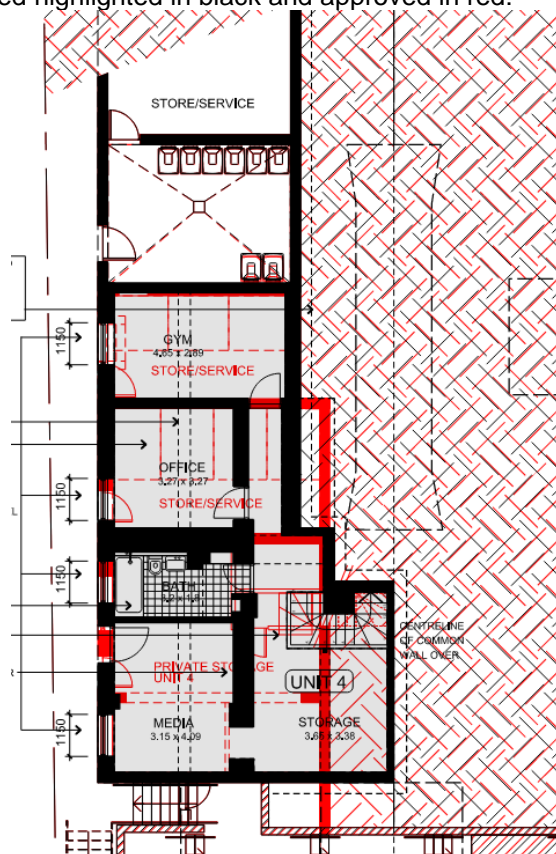


Figure 8 – Approved Floor Plan versus Proposed Floor Plan

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While there is a discrepancy between the approved development and the strata plan with regards to the siting of the Lower Ground Floor/Basement level, as highlighted above, this is limited to a minor extension to the north and relocation of a portion of the northern wall of the central storage area (proposed Office). As such, the strata plan can be considered to be substantially in accordance with the approved plans. The main concern with the strata subdivision was the reallocation of the common storage to private storage. However, it is acknowledged that the approved plans do not specifically stipulate the "storage/service" areas as common, nor is there any condition within the development consent with regards to the common storage areas, including any conditions which stipulate that the subject areas are required to be common storage.

Notwithstanding the above, in order for the strata subdivision of the building to be approved, owner's consent would have had to be granted by the owners corporation of the building who would have had to authorise and approve the proposed strata plan. It is noted that the owners who granted consent to the strata subdivision of the property were not the current owners, but the owners of the building at the time of April 2018. As a result of the approval of the strata subdivision and registering of the strata plan, the areas the subject of this development application form part of Lot 12, being Unit 4 of 15 Barry Street. As currently stands, the subject area that the submissions note as communal storage space, are legally allocated to Unit 4 and are not identified as common property within the existing/current strata plan.

It is noted that if the subject application had been submitted as a modification application, which requires Council to take into the consideration the circumstances of the original consent, then the proposed change of use and loss of common storage would likely have been found to be in contradiction to the original approval. However, the proposed change of use has been submitted as a new Development Application, and therefore the circumstance of the previous development consent are not a consideration. While the loss of common storage is recognised and may result in a variation to the minimum storage requirements under the ADG for some units, by virtue of the approval and registering of the strata plan, the subject areas are no longer common areas and form part of Unit 4. Due to the subject storage area being approved for inclusion in Unit 4, and as a result of the strata plan, this common storage area has effectively been removed. As such, the owner of Unit 4 is entitled to submit an application to change the use of these areas, and the proposed change of use must be considered on its own merits, in the context of the private ownership of this area.

In view of the above, while it is acknowledged that the loss of communal storage shall have a detrimental impact upon the occupants of the building, the loss of this area has already occurred, and therefore this would not warrant refusal of the application.

#### **Building Code of Australia, including Fire Safety**

Concerns have been raised in submissions regarding compliance with the Building Code of Australia, including compliance with the fire regulations, noting that the Lower Ground Floor level was constructed as non-habitable storage space.

In response to concerns raised by Council regarding compliance with the BCA, a Building Code of Australia Post Construction report was submitted by the Applicant. The report is prepared by Incode Solutions Pty Ltd, dated 22 February 2021, and considers the alterations (and unauthorised works) that have been undertaken to the Lower Ground Floor level. The purpose of the report is to assess the adequacy of the existing Unit with regards to the relevant provisions of the BCA.

Concerns have been raised in submissions regarding the proposed change of use to habitable spaces and compliance with the BCA, however the report considers the proposed uses, being the gym, office, media room, storage and bathroom.

The report makes recommendations for works to be undertaken, with particular regards to increased window openings, and it is also noted that several of the sections of the report rely on certification being provided from a professional engineer or the relevant installers, or require further detail. The report concludes that subject to compliance with the recommendations of the report, including additional certificate, the existing unit is adequate for the proposed uses, however no detailed assessment was submitted demonstrating how compliance is achieved. Furthermore, no Fire Safety report has been provided with the subject application.

Based on the information received, it is considered that the proposed development would likely be capable of complying with the relevant provisions of the BCA, however no certification has been provided in this regard. The BCA report notes that works are required to be undertaken, and drainage works will also be required. As such, it is recommended that a condition of consent be imposed for a detailed fire engineering and BCA compliance report to be provided by a suitably qualified professional prior to the issue of a Construction Certificate, which demonstrates that the proposed development complies with the relevant provisions of the BCA with particular regards to fire safety, and provides a detailed analysis regarding how compliance is achieved. Certification from all relevant professionals and persons shall also be required to be submitted to demonstrate compliance with the BCA provisions. Additional conditions of consent have also been recommended by Council's Coordinator – Compliance and Regulatory Building department.

A condition shall also be imposed that states that any building works that are required to be carried out in order to achieve compliance with the BCA, including any drainage works, shall be at the sole cost of the Applicant/owner of Unit 4.

### **Overdevelopment of the Site and Intensification of Use**

Concerns have been raised in submissions regarding the development being an overdevelopment of the site due to the increased GFA and the change of use. Of particular concern is the continued use of the rooms as bedrooms and increased occupancy of the apartment.

### **Built Form**

The proposed development shall not alter the approved landscaped open space and deep soil areas, building setbacks, building depth, building height, or external wall height. Furthermore, the proposal shall not alter the external appearance of the approved built form, with the exception of additional window openings on the southern elevation, with the architectural form of the existing building maintained. The proposed development shall not alter existing solar access to Unit 4, nor impact upon the residential amenity of neighbouring properties, subject to the report recommendations. There shall be no change to the existing private open space of Unit 4 or the communal open space located at the rear of the site. As discussed within the clause 4.6 assessment, the proposed additional FSR is minor and shall not result in any unreasonable impacts upon the adjoining properties.

### **Proposed Uses**

Several concerns have been raised regarding the proposed uses and the future use of the rooms as bedrooms which would result in increased occupancy for the development. It should be noted that Council does not support the use of the rooms as bedrooms given the non-compliance with the ADG and the compromised amenity of these rooms. Furthermore, in the previous development consent DA/476/2016, the Design Excellence Panel commented that the storage space on the Lower Ground Floor level was excessively large for Unit 4, and concerns were raised that if a 2.4m ceiling height could be achieved, a bedroom may be able to be accommodated. However, in that application the applicant clarified that a BCA compliant 2.4m high floor to ceiling height within the Unit 4 storage space cannot be achieved, with the Applicant confirming that the ceiling height would be 2.1m for storage. As such the application was approved on the basis that the lower level would never be habitable bedrooms. Subject to the recommended conditions of consent which seeks to ensure that the proposed room uses at the Lower Ground floor level remain ancillary and recreation uses and are not utilised as bedrooms at any time, it is considered that the proposed development would not represent an overdevelopment of the site, maintaining a two (2) bedroom apartment.

In view of the above, the proposed development is not considered to be an overdevelopment of the site in this instance.

## **10. Conclusion**

That the application to regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio be approved (subject to conditions) for the following reasons:

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

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- The proposal is consistent with the specific objectives of the R2 zone in that proposed activity and built form will provide for the continued use of the site as a residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties.
- The site is subject to existing use rights. The proposal is considered to be appropriate on the subject site and will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.
- While the loss of the communal storage is recognised as being detrimental to the other occupants within the building, the subject area has been allocated to Unit 4 which has already compromised the use of the storage areas, and therefore this would not warrant refusal of the application.

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Heritage planner

The application was referred to Council's Heritage Planner who provided the following comments:

*The site is occupied by a two and three storey residential flat building, the original building may have been of Interwar construction, but has been substantially modified including the provision of a contemporary upper level addition. To the west of the site are two Federation houses at Nos. 16 and 18 Barry Street listed as heritage items. Clause 5.10(4) of Randwick LEP 2012 requires council to consider the effect of a proposed development on the heritage significance of the heritage item.*

*The application proposes minor internal changes at lower ground floor level. The proposed development is separated from the adjacent heritage item and will not impact on its fabric. The proposed works are internal only, with no change to the external building envelope and will not impact on the streetscape setting, or views to or from the heritage items.*

#### 1.2. Development Engineer

The application was referred to Council's Development Engineer who provided the following comments:

*An application has been received for regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio (Variation to FSR).at the above site.*

*This report is based on the following plans and documentation:*

- *Architectural Plans by ASA Architects dated January 2021 ;*
- *Statement of Environmental Effects by ABC Planning dated February 2021*

#### **General Comments**

*No objections are raised to the development subject to the comments and conditions provided in this report. Only one condition will be required.*

#### **Parking Comments**

*Prior to recent development, the site comprised of 8 x 2 bedroom units with only 1 off-street carspace provided however following approval of DA/476/2016 the site now provides 6 off-street spaces in garages fronting Barry Lane with the number of units and bedrooms remaining unchanged from existing.*

*The parking shortfall was therefore dramatically improved as a result of DA/476/2016 reducing from 11 spaces to 6 spaces since under the DCP the site would generate a parking demand for 12 spaces.*

*The current application proposes alterations to the lower ground floor of unit 4 by replacing approved storage with a media room, office and a gym. These additional facilities will not increase parking demand on the site and even if considered as bedrooms would only increase parking demand by 0.3 spaces if adopting the rates in part B7 of Council's DCP.*

*This is not significant and in the context of the recent improvements in parking provision approved under DA/476/2016, not of concern to Development Engineering.*

#### **Seepage water Comments**

*The site is known to have seepage issues with conditions of consent for DA/476/2016 requiring the lower ground floors to be tanked and/or waterproofed.*

*A similar condition has been included in this consent as the proposed development involves expansion of the lower ground floor, which will require waterproofing.*

### 1.3. Co-Ordinator Compliance

The application was referred to Council's Coordinator of Compliance who provided the following comments:

*The Building Code of Australia Post Construction Report dated 22 February 2021 that has been prepared in relation to the alterations to the lower storey existing unit at 4/15 Barry Street, Clovelly and consider it to be satisfactory.*

*It is recommended that the said report recommendations outlined be adopted as a condition of development consent with details of the certification provided to the engaged Principal Certifier. As such, a performance solution report will also need to be provided and incorporated into the development consent and construction certificate application with a validation report provided to the Principal Certifier prior to occupation certificate.*

*And, any proposed variations to the recommendations and requirements in the subject reports shall be submitted to and approved by the Director City Planning, prior to approval of the construction certificate.*

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

Clause 4.6 -FSR

15 Barry Street, Clovelly

### RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the alterations and additions to the approved residential flat building at 15 Barry Street, Clovelly.

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

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

#### Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

#### Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the *Randwick LEP 2012* - maximum FSR of 0.5:1, demonstrated on the LEP map in Figure 1 below.

The proposal is for an FSR of 1.205:1, which is a variation of 0.705:1 from the maximum FSR of 0.5:1 provided for the subject site under the RLEP2012 statutory standards.

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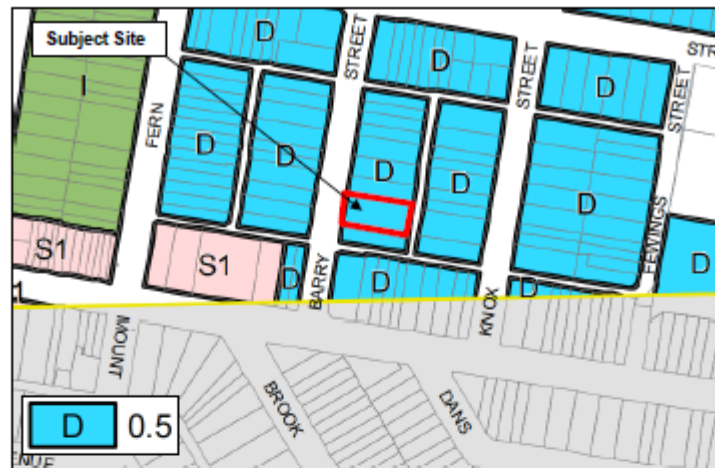


Figure 1: FSR Map

Residential flat buildings are prohibited in the R2 Low-Density Residential zone. However, the approved development has the benefit of Existing Use Rights, allowing provisions for alterations and additions, change of use and enlargement or expansion under the EP&A Act 1979.

It is reiterated that the proposed FSR of 1.205:1 varies 0.005:1 from the approved FSR of 1.2:1 through alterations and additions (DA-476/2016) determined on 24/11/2016. Therefore, the proposed additional gross floor area subject of this submission represents a minor deviation of 3.7m<sup>2</sup>, equivalent to a variation of 0.4% from the approved GFA.

#### Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

**Assessment:** It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The minor 0.005:1 FSR variation will be indiscernible from the Barry Street and Barry Lane streetscapes and neighbouring properties due to its inconsequential and confined location on the lower ground floor.



Figure 2: West elevation fronting Barry Street noting no changes to the facade



Figure 3: East elevation fronting Barry Lane noting no changes to the facade

- The proposed additional FSR will not result in any increased building height. Therefore, overall height, bulk and scale are retained as approved.
- The proposed FSR deviation is limited within the building footprint and approved envelope. The additional floor space does not alter the approved built form whilst maintaining the setbacks. Notably, the proposed alterations and additions, including the increased gross floor area, are incorporated into the private area of unit 4, not resulting in any adverse or unreasonable impacts to adjoining apartments or surrounding properties.

Clause 4.6 -FSR

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Figure 4: Proposed lower ground level reconfiguration (left) and approved lower ground level (right) noting proposed minor increase to the floor space area framed in red

- The proposed FSR variation of 0.005:1 is not responsible for any unreasonable adverse impacts to surrounding properties, including overshadowing and view loss. As above mentioned, the minor additional variation does not generate any visual bulk impacts and is imperceptible from neighbouring properties and public domain as it is contained within the lower ground floor.
- The increased 3.7m<sup>2</sup> is proposed as storage use, which, combined with the limited openings, ensures the privacy and amenity to surrounding properties will be maintained. Therefore, the proposed modifications and additional FSR are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual or acoustic privacy.
- The FSR variation is well integrated into the high-quality approved development and ensures that the built form is retained with no significant alteration.
- There are not adverse or unreasonable overshadowing, visual bulk, privacy or view loss impacts associated with the proposed FSR variation. Amenity is retained to surrounding properties as envisioned by the DCP amenity controls.
- Therefore, it is considered that the proposed deviation is of a minor nature and inconsequential in the circumstances and will not detract from the desired future character in the locality.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
1(a) to ensure that the size and scale of development is compatible	The proposed alterations and additions to the unit 4, including the minor increase of gross floor area and

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15 Barry Street, Clovelly

<p><i>with the desired future character of the locality.</i></p>	<p>consequently the FSR, do not affect the size and scale of the approved residential flat building.</p> <p>The additional floor area is sited on the lower ground level and within the building's footprint. Therefore, the increased FSR will be indiscernible from the surrounding properties and public domain.</p> <p>Additionally, the proposed non-compliant floor space relates to a storage area confined within the building envelope and will not intensify or compromise the future character of the locality.</p> <p>Therefore, the approved development and achieved FSR are considered to be compatible with surrounding properties.</p>
<p><i>1(b) to ensure that buildings are well articulated and respond to environmental and energy needs.</i></p>	<p>The proposed internal modifications and minor increase of FSR do not alter the built form and architectural design of the building. The proposed changes will not affect the building's articulation or result in any adverse environmental impacts.</p> <p>The proposed internal reconfiguration involves new openings to the south-western façade.</p>
<p><i>1(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item</i></p>	<p>The subject site is not within a conservation area and will not adversely affect the existing heritage items across Barry Street, at No.16 and No.18.</p> <p>The proposed additional FSR will not generate any adverse or unreasonable impacts on the surrounding heritage items. Notably, the proposed alterations and additions are sited on the lower ground floor and are therefore indiscernible from surrounding building and the streetscape. The proposed modifications do not create additional bulk or scale to the approved development, consistent with neighbouring properties and heritage items.</p>
<p><i>1(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</i></p>	<p>The proposed FSR variation will not generate any adverse or unreasonable impacts on adjoining properties.</p> <p>The additional floor space is accommodated within the approved envelope and building footprint. The proposal does not alter the approved building height as the sought modifications are confined to the lower ground level. The additional gross floor area extends to the interior of the building and is limited by the private area of unit 4. Therefore, it is not expected any visual bulk or overshadowing on adjoining properties related to the proposal.</p> <p>The proposed FSR variation is not related to any view loss from neighbouring developments.</p> <p>The increased floor space is proposed as storage use, which, combined with the limited openings, ensures the privacy and amenity to surrounding properties will be maintained.</p> <p>Therefore, the proposed modifications and additional FSR are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, and overshadowing and views.</p>

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Consistency with the objectives of the R2 Low Density Residential zone	
Objectives	Assessment
<ul style="list-style-type: none"> <li>• To provide for the housing needs of the community within a low density residential environment.</li> <li>• To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>• To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.</li> <li>• To protect the amenity of residents.</li> <li>• To encourage housing affordability.</li> <li>• To enable small-scale business uses in existing commercial buildings.</li> </ul>	<p>Residential flat buildings are prohibited in the R2 Low-Density Residential zone. However, the approved development has the benefit of Existing Use Rights, allowing provisions for alterations and additions, change of use and enlargement or expansion.</p> <p>The proposed FSR deviation does not raise any inconsistency with the R2 Low-Density Residential zone objectives. The proposed FSR does not alter the approved residential flat building concerning height, bulk and scale. Therefore the FSR is associated with a built form compatible with the developments in the site's vicinity.</p> <p>The proposal will maintain the low-density residential environment, thereby confirming that the variation does not raise any inconsistency with the objectives of the zone.</p>

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard*

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

- The minor 0.005:1 FSR variation will be indiscernible from the Barry Street and Barry Lane streetscapes and neighbouring properties due to its inconsequential and confined location on the lower ground floor.
- The proposed additional FSR will not result in any increased building height. Therefore, overall height, bulk and scale are retained as approved.
- The proposed FSR deviation is limited within the building footprint and approved envelope. The additional floor space does not alter the approved built form whilst maintaining the setbacks. Notably, the proposed alterations and additions, including the increased gross floor area, are incorporated into the private area of unit 4, not resulting in any adverse or unreasonable impacts to adjoining apartments or surrounding properties.
- The proposed FSR variation of 0.005:1 is not responsible for any unreasonable adverse impacts to surrounding properties, including overshadowing and view loss. As above mentioned, the minor additional variation does not generate any visual bulk impacts and is imperceptible from neighbouring properties and public domain as it is contained within the lower ground floor.
- The increased floor space is proposed as storage use, which, combined with the limited openings, ensures the privacy and amenity to surrounding properties will be maintained. Therefore, the proposed modifications and additional FSR are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual or acoustic privacy.

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- Due to the restricted area of the proposed FSR deviation sited to the interior of the building, privacy impacts are not expected to occur. In this regard, it is considered that the proposed FSR variation will not be responsible for any adverse privacy impacts.
- The FSR variation is well integrated into the high-quality approved development and ensures that the built form is retained with no significant alteration.
- There are not adverse or unreasonable overshadowing, visual bulk, privacy or view loss impacts associated with the proposed FSR variation. Amenity is retained to surrounding properties as envisioned by the DCP amenity controls.
- Therefore, it is considered that the proposed deviation is of a minor nature and inconsequential in the circumstances and will not detract from the desired future character in the locality.

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

#### Other Matters for Consideration

*4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

**Assessment:** The above assessment demonstrates that the proposed FSR satisfies the objectives of the floor space ratio standard and the R2 Low Density Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

#### Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-

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003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

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

**Assessment:** There is no public benefit in maintaining the FSR standard given the absence of amenity impacts associated with the additional gross floor area to the development. Importantly, the proposed increase of FSR will be imperceptible from the streetscapes or neighbouring properties due to its confined location.

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

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

Generally as to concurrence, for the reasons outlined above – and particularly having regard to the site specific nature of this clause 4.6 variation request – there is nothing about this proposed FSR variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters requested to be taken into consideration before granting concurrence.

**Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 15 Barry Street, Clovelly and is requested to be looked upon favourably by the consent authority.

*ABC Planning Pty Ltd*

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*February 2021*

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

**File Reference:** DA/100/2021

## Development Consent Conditions



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<b>Folder /DA No:</b>	DA/100/2021
<b>Property:</b>	4/15 Barry Street, Clovelly NSW
<b>Proposal:</b>	Regularisation of use regarding alterations and additions to the approved residential flat building involving an increase in floor space ratio (Variation to FSR).
<b>Recommendation:</b>	Approval

### GENERAL CONDITIONS

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

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

#### Approved Plans & Supporting Documentation

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>	<b>Received by Council</b>
DA001 (Site Plan), Revision A	Asa Architects	02 February 2021	04 March 2021
DA002 (Floor Plans – Lower Ground Floor), Revision A	Asa Architects	02 February 2021	04 March 2021
DA003 (Floor Plans – Ground Floor), Revision A	Asa Architects	02 February 2021	04 March 2021
DA005 (Elevations), Revision A	Asa Architects	02 February 2021	04 March 2021
DA006 (Sections), Revision A	Asa Architects	02 February 2021	04 March 2021

#### Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
  - a. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
    - Southern Elevation
      - Window to Office;
      - Window to Bathroom.
  - b. The following windows must be permanently fixed and non-openable. The windows are also to be provided with translucent, obscured, frosted or sandblasted glazing below a

height of 1.6m (as measured from the finished floor level) and are to be double glazed to minimise noise impacts:

Southern Elevation

- Window to Gym;
- Window to Media Room.

Alternatively, the windows to the Gym and Media room can be infilled with solid wall.

**As-built Works and Structures**

3. The works that have already been constructed on site do not form part of this consent. This development consent relates to the use of the as-built Lower Ground Floor level only and any new works identified on the approved architectural plan or as required by the conditions of this development consent.
4. A Building Information Certificate is to be obtained from Council regarding any unauthorised structures that have been constructed without development consent.

**Building Works**

5. All recommendations of the Building Code of Australia Post Construction report, prepared by Incode Solutions Pty Ltd, dated 22 February 2021, are to be adopted and implemented, as well as any further works as required by the updated BCA and Fire Engineering Report detailed in condition 14 of the consent.
6. Any variations to the recommendations and requirements in the subject reports shall be submitted to and approved by the Director City Planning, prior to approval of a construction certificate.
7. Any drainage works that are required in response to the change of use of the Lower Ground Floor level, including in order to demonstrate that the walls of the Lower Ground Floor level have been fully tanked and/or waterproofed to prevent the entry of any seepage flows, or any sub-soil drainage systems that are required to be amended, are to be undertaken as part of this development consent. Details of all proposed works are to be documented and submitted to the Principal Certifier prior to the issue of any Construction Certificate.
8. Any building works, including any drainage/seepage works, that are to be carried out in association with the development are to be at the full cost to the owner/developer of the subject apartment only, being Unit 4, 15 Barry Street, Clovelly (Lot 12 in SP97056).
9. This development consent does not authorise any works to common property unless agreed upon by the Owners Corporation/Strata Management and owners consent granted.

**Use of Rooms/Areas**

10. The Lower Ground Floor level is not permitted to contain any bedrooms. This is to be clearly documented on the Construction Certificate plans and no change of use to the rooms to bedrooms is permitted under this development consent.

**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**

11. 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**



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

#### **Section 7.12 Development Contributions**

13. The applicant shall submit a Cost Summary Report that reflects the cost of works in relation to the unauthorised works and any works that are to be carried out as part of this development consent. The report shall be submitted to Council for approval, prior to the issue of any construction certificate for the development.

In accordance with Council's Development Contributions Plan effective from 21 April 2015, a percentage of the development cost provided in the approved Cost Summary Report must be paid to Council, depending on the cost of works.

*Note: payment is applicable on building work having a value of \$100,000 or more, at the rate of 0.5% of the cost of the works for \$100,001-\$200,000 and the rate of 1% of the cost of the works for more than \$200,000.*

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

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

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

Where:

**IDC** = the indexed development cost

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

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

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

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

#### **Fire Safety and Building Code of Australia**

14. Prior to the issue of a Construction Certificate, a Fire Engineering and Building Code of Australia Compliance report and performance solutions report are to be prepared and be submitted to the Principal Certifier which provides certification that the proposed development complies with the relevant provisions of the Building Code of Australia in relation to the change of use of the rooms on the Lower Ground Floor level, including demonstrated compliance with the relevant fire regulations. The report should provide details to demonstrate how compliance with the relevant provisions is achieved and all certification as required by the Building Code of Australia Post Construction report, prepared by Incode Solutions Pty Ltd, dated 22 February 2021 and any updated reports is required to be submitted to the Principal Certifier.

#### **Long Service Levy Payments**

15. 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**

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

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

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

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

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

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

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

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

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

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

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

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

17. 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).
18. All new building work (including alterations, additions, and fire safety works) are to be carried out in accordance with the relevant provisions of the Building Code of Australia (BCA) and details are to be included in the Construction Certificate, to the satisfaction of the Certifying Authority.

#### **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**

19. Prior to the commencement of any building works, the following requirements must be complied with:
  - a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

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

- b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
- c) a *principal contractor* must be appointed for the building work and any applicable requirements of the *Home Building Act 1989* must be satisfied accordingly; and
- d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and
- e) at least two days' notice must be given to the Council, in writing, prior to commencing any works.

#### **Home Building Act 1989**

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

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

21. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

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

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

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

#### **Demolition Work Plan**

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

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

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

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

**Construction Noise & Vibration Management**

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

**Public Liability**

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

**Public Utilities**

25. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

**REQUIREMENTS DURING CONSTRUCTION & SITE WORK**

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

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

**Inspections during Construction**

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

**Building & Demolition Work Requirements**

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

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

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

**Support of Adjoining Land**

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

**Sediment & Erosion Control**

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

Details must be included in the Construction Site Management Plan and a copy must be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

**Dust Control**

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

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

*Dust control measures and practices may include:-*

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

**Temporary Site Fencing**

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

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

**Notes:**

- ☐ *Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*



- *If it is proposed to locate any site fencing, hoardings, amenities or articles upon any part of the footpath, nature strip or public place at any time, a separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.*

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

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

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

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

- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- f) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

#### **Site Signage**

33. 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**

34. 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	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm only</li> </ul>

jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development	<ul style="list-style-type: none"> <li>• Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

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

#### **Building Encroachments**

35. 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**

36. 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*.

#### **Seepage and Drainage Certification**

37. Prior to occupation of the development, the applicant shall submit to the Principal Certifier (PCA) and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls of the additional lower ground floor structures have been fully tanked and/or waterproofed to prevent the entry of any seepage flows and that any required sub-soil drainage systems have been provided in accordance with the conditions of consent for DA/476/2016

#### **Fire Safety Certificates**

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

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

#### **Building Code of Australia Certification**

39. Prior to the issue of any Occupation Certificate, a validation report is to be submitted to the Principal Certifier which demonstrates compliance with the relevant BCA provisions, and that appropriate certification has been provided.

#### **Structural Certification**

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

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**OPERATIONAL CONDITIONS**

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

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

**Use of the areas within the Lower Ground Floor level**

41. The rooms within the subject apartment, being Unit 4, 15 Barry Street, Clovelly (Lot 12 in SP97056) on the Lower Ground Floor level are not to be used as bedrooms or for habitation. The rooms are to be utilised for the purpose of a gym, office, media room, bathroom and storage area only.
42. The subject apartment, being Unit 4, 15 Barry Street, Clovelly (Lot 12 in SP97056), is to have a maximum of two (2) bedrooms within the apartment, and is not to be leased or advertised as more than two (2) bedrooms.

**Fire Safety Statements**

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

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

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

**Environmental Amenity**

44. 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.