

Randwick Local Planning Panel (Public) Meeting

Wednesday 14 December 2022



RANDWICK LOCAL PLANNING PANEL (PUBLIC)

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held online via Microsoft Teams on Wednesday, 14 December 2022 at 1pm

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

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

Development Application Reports

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Kerry Kyriacou
ACTING GENERAL MANAGER

Development Application Report No. D78/22

Subject: 102-104 Brook Street, Coogee (DA/214/2022)

Executive Summary

Proposal: Fitout and use of the basement level of an existing mixed-use building as a gymnasium including external signage.

Ward: East Ward

Applicant: Milestone (Aust) Pty Ltd

Owner: Lloyd Rothschild Pty Ltd


Cost of works: \$242,286.00

Reason for referral: 20 unique submissions by way of objection were received.

Recommendation


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/214/2022 for fitout and use of the basement level of an existing mixed-use building as a gymnasium including external signage, at No. 102-104 Brook Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA2142022 - 102-104 Brook Street, COOGEE NSW 2034 - Development - Milestone (Aust) Pty Ltd

D78/22

D78/22



Subject Site

Submissions received

North

Locality Plan

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as 20 unique submissions by way of objection were received during the notification period.

The proposal seeks development consent for fitout and use of the basement level of an existing mixed-use building as a gymnasium including external signage. The basement is a part of a commercial stratum lot that contains two ground floor tenancies occupied by a Dan Murphy's liquor retailer and a future food and drink premise approved under DA/284/2015 adjacent to the Brook Street frontage, along with a shared 36 space commercial car park. The application is proposed to be located within a 392m² basement tenancy below the ground level retail shops, which formerly accommodated the Randwick Rugby Club administration offices and player's gym and is currently used as a storage area.

The proposal was notified in accordance with Council's Community Participation Plan and the key issues raised in the 20 objections related to the following:

- Acoustic impacts and sleep disturbance;
- Illumination impacts;
- Loss of parking and secondary parking impacts;
- Signage design;
- Lack of accessibility from internal carpark to the gym;
- Anti-social behaviour and security issues; and
- Excessive operational trading hours.

The key issues associated with the proposal relate to acoustic impacts, parking and hours of operation.

Amended plans and supporting documents were submitted by the applicant to address the concerns of objectors and Council in accordance with the following:

- Addendum acoustic report and plan of management to provide further details on noise mitigation treatment measures; and

- Revised furniture and fitting plan detailing acoustic treatments within the basement envelope.

The proposal is recommended for approval subject to non-standard conditions that require compliance with relevant standards for the protection of acoustic amenity and an operational extended hour trial period.

2. Site Description and Locality

The subject site is known as 102-104 Brook Street, Coogee and is legally described as Lot 1 in DP1050760. The proposal is located within a 392m² basement commercial tenancy below the ground level retail shops of a 5-storey mixed use development with 50 residential apartments.

The basement is a part of a commercial stratum lot that contains two ground floor tenancies occupied by a Dan Murphy's liquor retailer and a future food and drink premise (café) approved under DA/284/2015 adjacent to the Brook Street frontage, along with a shared 36 space commercial car park. The commercial lot is accessed by vehicles via a southern boundary driveway shared with the residential component of the development and has a pedestrian access lobby at the center of the site. The basement tenancy formerly accommodated the Randwick Rugby Club administration offices and player's gym and is currently used as a storage area.

The site is zoned R3 medium density residential and is surrounded by medium to high density residential properties. Refer to site inspection images below (**Figure 1-4**) illustrating the existing site context and condition.



Figure 1: Brook Street Frontage



Figure 2: Commercial Lobby

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Figure 3: Basement office / gym area

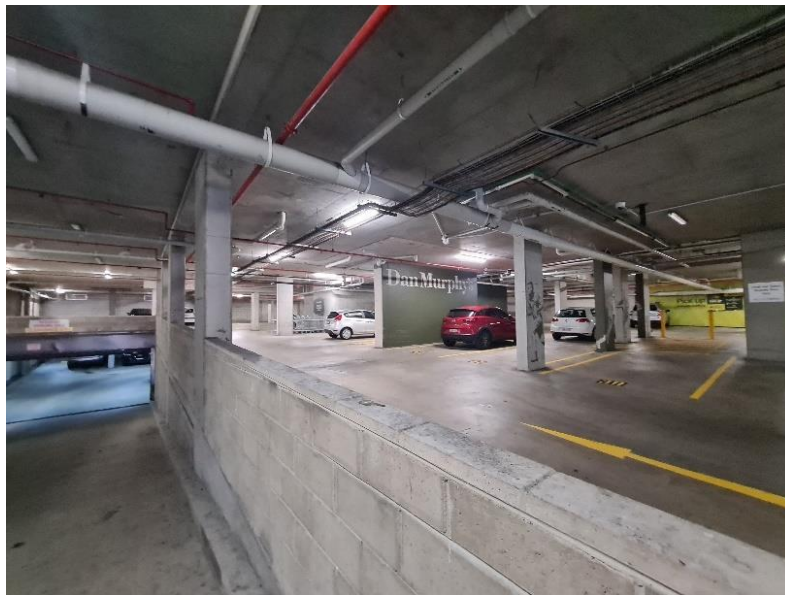


Figure 4: Ground level commercial carpark with separate residential carpark below

3. Relevant history

- **DA/295/2000** – Demolish existing club building and erect new club facility, Building A and B with 50 residential dwellings and 158 vehicle parking spaces. The application was approved by Council on 16/02/2001.
- **DA/284/2015** - Fitout and use of the former Randwick Rugby Club premises as liquor store and cafe including associated signage and hours of operation from 9am to 10pm, Monday to Saturday and 10am to 10pm on Sunday. Refused by Council on 13/11/2015 and approved by the Land Environment Court on 17/04/2018.

Condition 22 stated that “*this development consent does not approve the use of the lower ground floor as a retail use nor use of the front portion of the ground floor as a café or any lower ground floor tenant signage illustrated on plan DA004L. Separate development applications are to be submitted for those uses, or any other proposed use, for both those areas at the lower ground floor and ground floor.*”

- **DA/288/2021** - Alterations and additions to existing approved Cafe comprising a glazed enclosure and new bench seating approved by the Randwick Local Planning Panel on 09/09/2021. The application was also modified on one occasion to correct the hours of operation and enable consistency with the complying development certificate applicable to the site. The hours of operation for the café were approved under CDC/285/2019 and generally align with the liquor retailer to enable shared access through the stratum lot from the internal commercial carpark.

4. Proposal

The proposal seeks development consent for the fitout and use of the basement level of an existing mixed-use building as a gymnasium including external signage. The application comprises of the following detailed works:

- Demolition of existing internal layout;
- Installation of floor and wall linings to facilitate reception area, consultation room, new changerooms and accessible bathroom facilities and workout equipment zones (Refer to **Figure 5** below);
- Proposed hours of operation from 5am to 12pm midnight (Monday to Sunday);
- A maximum of 56 gym patrons; and
- 4 staff members supervising the site from 6am to 8pm Monday to Friday and from 6am to 7pm Saturday to Sunday.

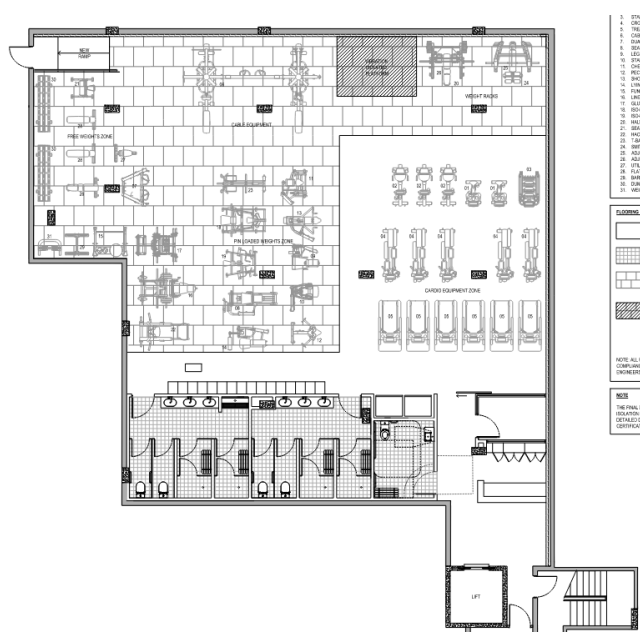


Figure 5: Detailed fitout plan

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 20 submissions by way of objection were received during the notification process:

- Unit 12 / 108 Brook Street, Coogee
- Unit 202 / 106 Brook Street, Coogee
- Unit 101 / 106 Brook Street, Coogee
- Unit 103 / 102-106 Brook Street, Coogee
- Unit 105B / 106 Brook Street, Coogee
- Unit 305 / 106 Brook Street, Coogee
- Unit 401 / 106 Brook Street, Coogee
- Unit 402 / 106 Brook Street, Coogee
- Unit 501 / 106 Brook Street, Coogee
- Unit 502 / 106 Brook Street, Coogee
- Residential Owners Corp. – Strata Plan 70446 – 102-106 Brook Street, Coogee
- (6x) Unit No. not provided – 102 - 108 Brook Street, Coogee
- (3x) No address provided

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Issue	Comment
<p>Noise impact from extended operations due to patrons accessing the building and congregating in the public domain.</p>	<p>An internal parking area has been provided to minimise noise impacts within the public domain at the front of the building. The hours of operation have been reduced via an operational consent condition that restricts the use of the gym from 6am to 11pm to align more closely with staffed hours and existing operations of the Café and the Liquor retailer. This will enable internal access through the liquor retailer and limit external noise impacts more closely to the timeframe of existing commercial operations.</p> <p>Signage has also been conditioned within the gym to remind patrons to be keep noise to a minimum when entering and exiting the premise.</p>
<p>Secondary parking impacts and a loss of parking for residents.</p> <p>Lack of onsite commercial parking for the proposed 60 patrons, given the spaces allocated to Dan Murphy's and café approved under DA/284/2015.</p>	<p>The proposed parking demand of 16 spaces (increase from 10 previously allocated) is to be accommodated within the internal commercial carpark that is shared with the liquor retailer and café tenancies. It is also noted that the site is within walking distance of a medium density residential catchment and has a bus stop directly adjoining the entrance to encourage public transport use. In addition, a consent condition will be recommended requiring the installation of bicycle parking racks within the commercial basement in accordance with the Randwick DCP. The proposal has been reviewed by Council's Development engineer, who also did not raise concern with parking demand.</p>
<p>Vehicle queuing to enter carpark.</p>	<p>The number of existing parking spaces within the commercial carpark, the 55m length of the existing shared driveway and the additional 20m length of the separate residential basement ramp are not being amended by the subject proposal. The proposed 56 patron capacity would be accommodated across the entire day of operations and would not be focused at one time period. It is also noted that due to timed parking restrictions the carpark has a high rate of parking turnover and is not fully occupied by the existing commercial tenancies, with the additional 6 space parking demand able to be accommodated within this area. The site is also accessible via walking, public transport and will be conditioned to provide bicycle parking facilities. The proposal has been reviewed by Council's Development engineer, who also did not raise concern with vehicular queuing.</p>

Issue	Comment
Traffic generation and safety impacts.	The proposed gym is utilising an existing basement commercial tenancy previously considered under DA/284/2015 with a parking rate of 10 car spaces. It is noted that the proposed conversion to an indoor recreation facility with a 56 patron capacity would increase the parking demand to 16 spaces. Notwithstanding, given that the use of the facility would be spread throughout the day and the maximum patron limit will be enforced as a consent condition. The additional traffic generation is therefore not considered to result in a substantial increase within the commercial parking area and the previously approved speed limits and access configuration is preserved in the subject proposal.
Adequate ventilation to prevent use of fire door exit.	The proposed premise will need to provide adequate mechanical ventilation and ensure the fire exit is only utilised in the case of emergencies in accordance the BCA. It is also noted that the air conditioning system will be updated as a part of the proposal and is referenced in documents supporting the application. A consent condition has been applied to ensure that all new works comply with these construction standards.
Owners consent not provided by residential strata.	The proposed works are located completely within the commercial stratum lot and as such owner's consent is not required from the residential owner's corporation of the building.
Signage does not comply with original building signage zones and will result in excessive advertising and illumination impacts.	<p>Council notes that condition 22 of DA/284/2015 outlined that signage zones for the basement tenancy were subject to further approval and as such these indicative signage zones do not dictate the proposed signage locations or the design under the subject proposal.</p> <p>The proposed signage zones have been limited to one sign above the pedestrian entrance, one adjacent to the vehicular driveway and the final emplacement recessed internally within the commercial. Accordingly, the proposed locations are not considered to result in visual clutter or excessive advertising, given that they will provide for business identification and wayfinding.</p> <p>A consent condition will be recommended to delete the internal illumination from the driveway sign to ameliorate impacts to surrounding residential receivers.</p>

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Issue	Comment
<p>Feasibility of management plan signs advising patrons to not drop weights when this is a lifting safety mechanism.</p> <p>Noise and vibration transmission within the building from dropped weights. No acoustic testing provided in relation to weight dropping or machine equipment.</p> <p>Noise impacts to work from home residents.</p>	<p>It is noted that when feasible, the management plan has recommended the reduction of weight dropping and that in certain circumstances this is a necessary safety mechanism. Notwithstanding, the free weight area, gym equipment and lifting racks have been treated with 60mm rubber matting to attenuate noise and vibration impacts. In addition, the gym will only accommodate one heavy Olympic lifting platform that is isolated from the structure of the building and will limit transfer related impacts.</p> <p>Further acoustic testing of weight dropping was undertaken in the addendum report to gauge impacts from the commercial liquor retailer tenancy directly above the site, which is in closer proximity than the nearest residential receiver. The testing results displayed that these acoustic impacts could be managed through the attenuation design measures noted above.</p>
<p>Bathroom pipe relocation will require damage to the structural slab and necessitate the submission of a structural report.</p>	<p>Agreed, a condition has been included requiring the structural certification of all works undertaken the proposal as a part of the development consent.</p>
<p>Fire door would provide direct access to the resident basement.</p>	<p>Under the relevant building codes this door would only be accessible during emergencies and shall ensure proposed facility is secured from the residential basement.</p>
<p>Extended operation hours in the context of existing approvals to liquor retailer and café only extending from 7am to 10pm.</p>	<p>A condition has been recommended to reduce the hours from 6am to 11pm with a 12-month trial period for hours within the sleep disturbance period (6am-7am & 10pm-11pm). This will ensure that the facility aligns more closely with the hours approved for existing commercial tenancies.</p>
<p>Lack of direct access from the carpark area to the gym would result in safety and noise issues for patrons walking along the building driveway.</p>	<p>The proposed facility will generally align with the hours approved for the liquor retailer, with internal access enabled through this tenancy to the café and commercial lobby. The proposed hours have been predominantly limited to the daytime, with any hours during the period of sleep disturbance subject to a 12-month trial period. The driveway is currently used by carpark patrons to access the café or the wider Coogee precinct and this arrangement will continue to function as a secondary access, given the low-speed limit restrictions within this part of the development. Council's Development Engineer has also recommended that formalisation of this secondary access path via shared way line markings as a consent condition.</p>

Issue	Comment
Roller door noise and light spill resulting from car park use outside of hours 7am to 10pm when the door is kept open.	<p>External driveway and pedestrian lobby lighting has been conditioned to comply with AS4282 – Control of the obtrusive effects of outdoor lighting to ameliorate impacts for surrounding residential receivers.</p> <p>The commercial roller doors will remain open an additional hour earlier and later than the existing closure periods and as such only a minimal change is anticipated to the noise environment.</p>
Extended hours resulting in antisocial behaviour and security issues.	<p>It was noted from a recent site inspection that the commercial parking area is currently permanently open due to roller shutter door damage and repairs are in the process of being undertaken. The site inspection also revealed that the residential basement is isolated below the commercial parking area with a separate gate.</p> <p>In addition, previous reports of antisocial behaviour or security incidents have not been submitted to Council's Compliance team or notified to Council from NSW Police during the period the basement has remained permanently open.</p> <p>Consent conditions have also been recommended to require the installation of CCTV cameras within the commercial carpark, driveway, commercial lobby areas and the gym to manage security issues if these measures are not already in place.</p>
<p>No staffing from 8pm to 6am will prevent complaint and noise reporting during these hours and result in further uncontrolled noise impacts, safety and security risks.</p> <p>Security measures to control non-members entering the gym during unsupervised hours.</p>	<p>The proposed hours where staff are not available onsite is limited from 8pm to 11pm. Notwithstanding, the complaints reporting process has been conditioned to be available during all hours of gym operations.</p> <p>As discussed above, a condition is also recommended for the installation of CCTV systems within the gym to control the entrance of non-members and security issues, which is common practice for facilities of this nature in terms of managing liability. In addition, the plan of management has included details of a key FOB system that will be implemented to manage access outside of staffed hours.</p>
Amplified music and microphone impacts during morning operation.	The addendum acoustic report and consent conditions have recommended the implementation of noise limiters and use the cardio equipment ear phone audio devices to prevent acoustic impacts within the building.
Lack of consultation with residential property owners.	Owners were consulted during the notification period and in assessment records it appears that attempts were also made to request access for acoustic testing both before and during the assessment of the application and that access was denied.

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Issue	Comment
Construction impacts and concerns for the removal of construction waste from the site and the use of the building driveway requiring owner's permission.	These impacts are temporary in nature and would need to abide by consent conditions that restrict hours and amenity impacts to residents within the building. It is also noted that the removal of construction waste will need to utilise the part of the commercial stratum lot and that the use of the residential basement is not permitted without owner's agreement.
Sleep disturbance from light spill and noise impacts.	<p>The illuminated sign has been conditioned for deletion and the driveway / carpark lighting has been conditioned to comply with the relevant Australian Standards for control of external lighting.</p> <p>The hours of operation are predominantly restricted to the period of 7am to 10pm, which is outside of the sleep disturbance period. The additional morning and night hours are also limited by a 12-month trial period.</p>
<p>Maintenance issues and cleanliness of the commercial carpark and outdoor awning area.</p> <p>Commercial viability noting the number of gyms in the local area.</p> <p>Loss of property value.</p>	These are not matters for consideration under Section 4.15 of the ACT.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policies

State Environmental Planning Policy (Industry and Employment) 2021

The proposal includes the erection of three business identification signage zones that provide wayfinding and advertisement for the gym tenancy, in accordance with the following:

- One fascia sign (01) 3m x 300mm (non-illuminated) above the commercial lobby entrance;
- One flush wall sign (02) 800mm x 800mm (non-illuminated) within the commercial lobby; and
- One flush wall sign (03) 2.97m x 1.08m (internally illuminated) on the eastern elevation of the plant enclosure adjacent to the driveway.

Refer to **Figure 6** below for proposed locations.



Figure 6: Proposed Signage Zones

The applicable aims and objectives for signage under clause 3.1 of the SEPP are outlined as follows:

- i. is compatible with the desired amenity and visual character of an area, and
- ii. provides effective communication in suitable locations, and
- iii. is of high quality design and finish.

The proposed fascia and street facing wall sign are affixed to the eastern elevation and will provide business identification above the gym pedestrian entrance and adjacent to the vehicular access driveway. The remaining wall sign will provide business identification within the internal lobby area. The proposed signage configuration is consistent with the approved signage for the liquor retailer that also has non-illuminated signage above their main pedestrian entrance and adjacent to the commercial driveway access. The proposed design will not result in any impacts through visual clutter or illumination impacts to residences within and adjoining the site, subject to the deletion of the internal illumination from sign 03 via a recommended consent condition. The design as amended via consent conditions shall incorporate an un-illuminated finish that matches the existing onsite signage and delivers an acceptable outcome.

A further assessment against the Schedule 5 criteria is provided below.

Assessment Criteria	Comment
1 – Character of the area	The proposal is consistent with the business identification exhibited within the commercial context established by the existing tenancy of the mixed use building and the wider B2 Local centre zone to the south of the site.
2 – Special areas	The proposal has incorporated a signage design outcome that does not detract from the eastern street façade and has positioned the proposed identification signage on the existing fascia and to screen the unsightliness of the plant enclosure. The internal lobby sign has also been positioned discretely within the access corridor.
3 – Views and vistas	Locations do not result in view impacts.
4 – Streetscape, setting or landscape	The signage has been rationalised to one above the pedestrian entrance and adjacent to the vehicular driveway to mitigate visual clutter

	and will not protrude beyond the existing external building envelope.
5 – Site and Building	The additional signage is designed to align with the existing awning fascia, the external plant enclosure, and the internal access corridor. The proposed locations will not obstruct views to building features and is not considered excessive in size.
6 - Associated devices and logos with advertisements and advertising structures	Business identification anticipated for inclusion within signage and is subject to separate approval.
7 – Illumination	Internal illumination proposed for removal via consent condition to protect residential amenity within the site and to adjoining properties.
8 – Safety	No identified safety impacts would result from the proposed signage zones.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Business R3 Medium Density Residential under Randwick Local Environmental Plan 2012, and the proposed 'recreation facility (indoor)' is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity will enable other land uses that provide facilities or services to meet the day to day needs of residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.9:1	No change to gross floor area, existing basement shell utilised.	Yes
Cl 4.3: Building height (max)	12m	No change to building height.	Yes

6.2.1. Clause 5.10 - Heritage conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The site is not listed as an item of heritage significance or within a conservation area. Notwithstanding, the northern and southern side boundaries of the site are both adjoined by heritage items along Brook Street, including:

- **I63** - 2 storey semi-detached group at 90–100 Brook Street (Local significance);
- **I65** - "Catley's Wall", sandstone retaining wall at 108 Brook Street (Local Significance); and
- **I66** - Inter-war residential flat building at 108 Brook Street (Local Significance).

As a result of this context, Council's Heritage Planner reviewed the proposal and advised that the original proposal was not supported for the following reasons:

- **Unreasonably extended hours of operation**

Planner Comment: Consent conditions have been recommended to reduce the hours of operation from 6am to 11pm, with extended hours from 6am – 8am and 8pm - 11pm, subject to a 12-month trial period.

- **Lack of staffing oversight**

Planner Comment: The recommended change to operational hours will more closely align with the proposed staffing hours of 6am to 8pm Monday to Friday and 6am to 7pm Saturday to Sunday. In addition, a consent condition has been recommended to ensure a compliance record and contact number is maintained during all hours of operation.

- **Lack of detailed analysis for acoustic, signage and lighting, as well as security amenity in the public domain**

Planner Comment: An amended acoustic report and plan of management were submitted by the Applicant. These documents have addressed the need for more stringent acoustic flooring treatment measures, isolated weight-lifting platforms, noise limiting devices and further acoustic attenuation measures to prevent the transfer of structural noise and vibration within the mixed-use development. External lighting has been conditioned to comply with relevant Australian Standards and the proposed internally illuminated sign has been conditioned for deletion to ameliorate illumination impacts to surrounding residential properties and heritage items. As discussed above the proposed hours of operation from 6am – 11pm will generally either align with the AM peak for staffed operations and the 10pm closing time of the liquor retailer to maintain internal access from the commercial carpark to the commercial lobby during a majority of the extended PM operational period without the use of the public domain.

- **Other issues in the remit of Council planning are noted in respect of the significant number of objections received, and which include noise transfer and access/egress security within the building and its site, as well as parking.**

Planner response: It is noted that submissions have been received from residents in the building, however the proposed access configuration is consistent with the access provided to the Café and the basement tenancy previously considered in DA/284/2015 and DA/288/2021, particularly with the Café including a similar patron capacity (50) to the proposed gym. The internal parking area and gym basement envelope can function independently from the residential component with separate circulation cores and the residential basement parking area that is secured via a separate gate from the commercial stratum.

As discussed above, concerns for noise transfer have been addressed by the submission of additional information and consent conditions limiting operation hours and requiring the delivery of acoustic attenuation measures at the CC and operational stage.

The parking arrangements are consistent with DA/284/2015, where 10 spaces within the commercial carpark were allocated to the basement tenancy as a general commercial use in accordance with the Randwick DCP. Whilst it is understood that the proposed gym use (indoor recreation facility) would require the provision of 16 spaces under the Randwick DCP, the additional 6 space demand can be accommodated in the existing surplus capacity of the timed parking area, given that the liquor retailer would have alternate peak operational periods and site inspections have revealed that this area has a high parking turnover due to paid parking arrangements. Parking demand will also be spread throughout the day and not focused during a single time period. Further, a consent condition will recommend the provision of bicycle parking racks within the carpark to enable the use of sustainable transport and encourage active transport options such as walking within the local R3 medium density area. The site is also accessible via public transport, with a bus stop adjacent to the building that will assist in reducing private car dependence. The proposed parking configuration was reviewed by Council's Development Engineer, who raised no concern in relation to the provision of onsite parking.

6.2.2. *Clause 6.13 – Business premises, office premises, restaurants or cafes and shops in residential zones*

In accordance with Clause 6.13(3)(a), the building at the subject site existed prior to the commencement of the RLEP 2012 and consent may be granted in relation to the indoor recreation facility in the R3 Medium Density Residential Zone. The proposal is consistent with the objectives of Clause 6.13(1) in that the proposed fitout and installation works will provide for the establishment of a small-scale business development in a residential zone, used in conjunction with dwellings, and provide neighbourhood scale commercial development to encourage walking and cycling as preferred modes of access.

In accordance with Clause 6.13(3)(b), the consent authority must also be satisfied that the proposal achieves the following:

- (i) *the development will not adversely affect the amenity of any residential component of the development and the surrounding locality, and*
- (ii) *the intensity of development is suitable for the building, and*
- (iii) *the degree of modification of the footprint and facade of the building is consistent with the scale and desired attributes of surrounding development.*

No concerns are raised in terms of built form changes given that the works are predominantly located below ground. The external illumination impacts have been removed via conditions of consent.

As discussed above, it is anticipated that the proposed parking demand can be accommodated within the existing commercial carpark and that cycling, walking and public transport options will be available to residents within the immediate R3 medium density catchment.

The proposal includes the extended operational hours that have been reduced to 6am to 11pm, in accordance with recommended trading hours outlined in Part D13 (Late night trading) of the RDCP 2013 for all other zones. The application has also been supported by an acoustic report that demonstrates the proposed use can be made to comply with Council's amenity criteria and has recommended attenuation design and operational management measures to ameliorate impacts to residential receivers within the building. The application was referred to Council's Environmental Health Officer who raised no objection in relation to base hours of 7am to 10pm and additional hours outside of this period being managed as a reviewable 12-month trial condition. It is therefore considered that the proposal, as conditioned, would not result in significant adverse amenity impacts to the nearby residents and satisfies the matters of consideration stipulated in Clause 6.13(3)(b).

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<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 in 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 in the public interest.

8.1. Discussion of key issues

Part D13 - Late Night Trading

Part D13 of the RDCP 2013 provides objectives and controls that are applicable to late night trading premises in Randwick Local Government Area (LGA).

Part D13 of the RDCP contains the following policy objectives for late night trading:

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

Section 1.3 - Application

Part D13 of the RDCP 2013 applies to the proposed trading hours outside the recommended hours of operation for late night trading premises in the R3 Medium Density residential zone and the proposal falls within the definition of an intensified use under Part D13 due to the change of use from the approved commercial basement shell to an indoor recreation facility with proposed operational hours of Monday to Sunday 5am to 12am midnight 7 days a week.

Submissions were received in relation to potential noise and operational management issues associated with the proposed use during the exhibition period. It is also appreciated that the basement shell is located within a mixed-use development and surrounded by medium density development along both side boundaries. Notwithstanding, the proposed basement envelope is located within the front portion of 102-104 Brook Street, with only the liquor retailer located directly above and residential properties are predominantly recessed further to the rear of the site. The proposed gym does not have any external openings orientated towards residential receivers or directly adjoining the basement envelope.

An assessment of the potential acoustic and vibration impacts resulting from the proposed indoor recreation facility use has been considered in the submitted plan of management, the acoustic report recommendations (made by VMS Australia Pty Ltd) and conditions imposed by Council's Environmental Health team. The plan of management will also assist in minimising potential amenity impacts to surrounding properties, including patron management, parking and transport availability, security and safety, complaints handling and waste management.

Council's Environmental Health team has recommended the operating hours be approved with core hours from 7am – 10pm and a reviewable 12-month trial period for extended hours from 6am - 7am and 10pm - 11pm, subject to acoustic attenuation measures and the adoption of operational procedures. This will enable the opportunity to monitor the site and any potential impacts and complaints made to Council, particularly in the case of late night or early morning sleep disturbance impacts. The proposed trial period will determine if the extended operation of the indoor recreation facility is suitable to remain or if further mitigation measures are required to ameliorate amenity impacts to properties within and neighbouring the site.

Council is only considering the proposed extended trading hours on a 12-month trial period and have recommended conditions to reduce the proposed hours of operation from 5am – 12pm midnight to 6am – 11pm, along with managing potential noise, security, parking and amenity impacts. If compliance and noise issues are observed during the trial period, the hours of operation will revert to 7am - 10pm and limit the extent of morning peak and night off peak periods.

Refer to the attached consent for a summary of the extensive conditions recommended by Council's Environmental Health Officer to control acoustic impacts and protect amenity within the building.

Section 1.4 - Low impact category

Low Impact

i) Any other retail or business premises which operates after 11pm.

Note

Under section 1.4(i) of the policy entitled Late Night trading categories, the subject site is a business premise with proposed hours after 11pm and therefore, falls within the scope of a low impact category.

The below controls are designed to protect the amenity of the neighbourhood, particularly residential properties from late night trading venues.

Section 2 - Matters for Consideration

The recommended hours of operation for late night trading premises in the 'B1 Neighbourhood Centre and other zones' are outlined below, noting that the site is located within the R3 medium

density residential zone and has a potential conflict between commercial operations and residential occupants within the mixed-use development.

Objective

- To ensure that late night trading proposals are appropriate to the location in terms of nature and scale of operations.

Controls

i) All DAs for late night trading premises must address the following matters:

- Specific nature of the proposal (e.g. pub, nightclub, restaurant etc).
- Proposed layout of the premises - Current and proposed hours of operation.
- Existing trading hours and nature of other late night trading premises operating within a 100 metre radius.
- Current and proposed size of the premises and maximum patron capacity (including the maximum number of patrons that will be standing and/or sitting at the one time).
- Details on whether alcohol is to be sold and/or consumed on the premises and measures for responsible service.
- Measures to minimise likely noise or other amenity impacts on adjoining properties.
- The likely impact of the premises on the concentration of late night uses in the locality.
- Details on any proposed entertainment and likely amenity impacts.
- Suitability of the location and context of the proposal, including proximity to residential land uses and other sensitive land uses (e.g. schools, places of worship etc.).

The following table provides a guide to the range of hours of operation that are applicable to the late-night premises in the R3 zone in Randwick Local Government Area.

B1 Neighbourhood Centre and other zones	
Indoor	Up to 11pm Monday to Saturday and 10pm Sundays.

The proposal seeks a blanket operational approval for Monday to Sunday (including Public Holidays) from 5am – 12 midnight.

The indoor recreation facility is located within the basement of a mixed-use building that is surrounded by residential development and the Coogee commercial centre further to the south, with similar uses having trading hours, which are outlined as follows:

Titan Fitness – 29-31 Alfreda Street, Coogee

Zone: B2

Capacity: No patron limit – historic use

- 5am to 10pm Monday to Thursday
- 5am to 9pm Friday
- 6am to 7pm Saturday
- 7am to 7pm Sunday

Crossfit Coogee 2034 – 54B Bream Street, Coogee

Zone: RE1

Capacity: No patron limit

- 5am to 8pm Monday to Friday
- 7am to 10am Saturday
- 8:30am to 10:30am Sunday

Coogee Gym Innervate – 92 Dudley Street, Coogee

Zone: R3

Capacity: 5 patrons prior to 7am / No patron limit all other hours

- 6am to 8pm Monday to Friday
- 6am to 1pm Saturday
- Closed Sunday

F45 Training Coogee – 116 Coogee Bay Road, Coogee

Zone: B1

Capacity: 25 patron limit

- 5am to 7pm Monday to Friday
- 6am to 3pm Saturday
- 7am to 2pm Sunday

S1 Training Coogee – 51 Dolphin Street, Coogee

Zone: RE1

Capacity: 45 patron limit

- 5am to 7pm Monday to Thursday
- 5am to 6pm Friday
- 6:45am to 9:15am Saturday
- 8am to 9am Sunday

In consideration of the surrounding indoor recreation facility development context the application is not proposing trade uncharacteristic of the area and the approval of a 12-month trial period for early morning and night hours is not unreasonable, subject to a reduction from 6am to 11pm to align more closely with these existing developments. This will ensure that the site is managed appropriately to minimise anti-social behaviour and reduce noise related amenity impacts.

However, based upon the initial concerns raised by Environmental Health and Planning, reduced hours of operation are recommended for approval in accordance with the following:

- 7am to 10pm Monday to Sunday (including public holidays)
- 6am to 7am and 10pm to 11pm Monday to Sunday (including public holidays) on a 12-month trial period.

This trial period will allow Council with sufficient time to determine the appropriateness of the proposed extended trading hours. In the aim of monitoring any complaints and amenity impacts associated with the indoor recreation facility that may potentially impact properties within and surrounding the site. Council also notes that the abovementioned hours recommended for approval would comply with the hours nominated for the residential zones under the part D13 of the DCP.

The initial application was referred to Council's Environmental Health Officer who requested further information as a part of the Acoustic Report. This information request was issued to the applicant and an addendum acoustic report was prepared by VMS Australia Pty Ltd, dated 3 November 2022, along with the submission of a revised plan of management and detailed fit out plans that include each of the acoustic attenuation measures (noise limiters, floor matting and isolated lifting platforms) requested by Council. The report concludes that the noise emissions can comply with the relevant noise criteria subject to following recommendations:

- An operational management plan/plan of management should be implemented by the proprietor. The Plan should outline policies and procedures to ensure noise emission from patrons are kept to a minimum.
- Provision of signage at gym entry/exit advising patrons to avoid excessive noise when entering and leaving the premises.
- Staff to monitor patron behaviour on arrival and departure to advise of importance of maintain the acoustic amenity of surrounding residents where necessary.
- Education and training of all gym staff, personal trainers, and members, instructing how to place weights without dropping.
- Erection of clearly visible signage throughout the gym advising members that they must not drop weights or allow weights to drop on the floor, or use weights outside the designated weight areas.

- Imposition of penalties (membership warnings, suspensions, or lockout restrictions) on members identified dropping weights.
- Free weights use is to be restricted to the free-weights area only.
- The level of background music should be set to a level that enables speech intelligibility within the gym and ensures patrons are not required to raise their voices to communicate.
- Restrict the use of low frequency speakers (sub-woofers) and ensuring any full range speakers are isolated from building structure.
- Installation of impact sound absorbing flooring where high levels of impact are expected, such as the free weights area (storage and use), functional training areas, pin-loaded machine areas.
- Installation of a soft material such as carpet or thick fabric on to equipment surfaces where there is a potential for high impact (e.g., arms/hooks of barbell racks).
- Appropriate vibration isolated platform for Olympic Weights.
- Roller shutter door will remain open during the operation of the Gym.
- A noise limiter will be installed within the gym to control music noise within the gym to a limit of L 10(15minute) 75dBA.

The addendum information was reviewed by Council's Environmental Health Officer, who provided conditions for a partial 12-month trial period. By utilising the measures recommended in the acoustic report, plan of management and the conditions recommended by Council as a part of indoor recreation facility operations, the premise will uphold the safety, security, and amenity of the locality. These conditions, in relation to acoustic management, patron capacity, operational hours and construction, have also been included in the consent to ensure compliance with relevant legislation and guidelines.

For the reasons discussed above, the recommended hours of operation are considered satisfactory subject to conditions. It is further noted that the subject site is nearby the B2 Local Centre zone and B1 Neighbourhood Centre zone at Coogee Bay Road, where there are a range of both functional and conventional type indoor recreation facilities with similar trading hours. The proposal, as conditioned, is consistent with the provisions of Part D13 of the RDCP 2013 that requires the hours of operation for late night trading premises within and in proximity to residential zones being limited to 11:00pm.

B7 – Transport, Traffic and parking and access

The objectives of the clause are outlined as follows:

- To promote sustainable transport options for development, particularly along transport corridors, in commercial centres and strategic/key sites.
- To manage the provision of car parking within the broader transport network.
- To support integrated transport and land use options which can demonstrate shared and effective car parking provision with car share facilities, motorbikes/scooters, bikes and links to public transport.
- To ensure car parking facilities, service and delivery areas and access are designed to enhance streetscape character and protect pedestrian amenity and safety.

Table 1 required that the originally approved commercial basement shell provide 1 space per 40sqm and that 9 spaces were allocated from the commercial parking area. The proposed change use to an indoor recreation facility has a rate of 1 space for 25sqm and results in a parking provision of 16 spaces being required to support the new use. Accordingly, the subject proposal would result in a shortfall of 7 car spaces.

Notwithstanding, the controls under section 3.3 provide exceptions to the delivery of the abovementioned parking rate when it can be adequately demonstrated the incorporation of additional parking is unfeasible or unnecessary in the site context. On this basis, it is considered that the provision of the additional 6 parking spaces is not required in this instance due to this demand being accommodated in the existing surplus capacity of the timed parking area, given that the liquor retailer would have alternate peak operational periods and site inspections have revealed that this area has a high parking turnover due to paid parking arrangements. Parking demand will also be spread throughout the day and not focused during a single time period. Further, a consent

condition will recommend the provision of bicycle parking racks within the carpark to enable the use of sustainable transport and encourage active transport options such as walking within the local R3 medium density area. The site is also accessible via public transport, with a bus stop adjacent to the building that will assist in reducing private car dependence. The proposed parking configuration was reviewed by Council's Development Engineer, who raised no concern in relation to the provision of onsite parking and agreed with the variation to the DCP parking rate in this instance.

Council also notes that the preliminary plan of management that will be finalised as a consent condition, will encourage the use of public transport, walking and cycling within the local area.

Under section 4, the facility is also required to provide 1 bicycle space per 10 car spaces and as a result 2 bicycle spaces would need to be provided for facility patrons. It was noted from Council's site inspection and supporting documents that 2 bicycle racks are currently provided, however based upon the number of spaces within the carpark an additional 2 racks will be conditioned to ensure that 4 bicycle racks are available within the commercial carpark.

9. Conclusion

That the application for the fitout and use of the basement level of an existing mixed-use building as a gymnasium including external signage be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposed development will make a positive contribution to the adjoining commercial centre.
- The proposal will not have any significant impacts on the local built character and natural environment nor any adverse social and economic impacts in the locality.
- The site is suitable for the proposed development, noting the previous approvals on the site.
- The proposal has been amended to address amenity concerns raised by local residents and non-standard conditions have also been recommended to adequately address operational matters for acoustic impacts, light spill, security and anti-social behaviour and parking.

Appendix 1: Referrals

Internal referral comments:

1.1. Environmental Health

Council's Environmental Health officer has reviewed the subject application and raised no objection subject to reviewable conditions being imposed and other relevant conditions to safeguard the amenity of the adjoining properties including detailed mechanical ventilation and gym fitout design, acoustic attenuation measures and construction and waste management.

Refer to key issues discussion above for additional information requested as a part of the assessment.

1.2. Heritage planner

Council's Heritage Planner raised concerns with heritage conservation being impacted by the operational impacts associated with the original proposal in relation to the following matters:

- Unreasonably extended hours of operation
- Lack of staffing oversight
- Lack of detailed analysis for acoustic, signage and lighting, as well as security amenity in the public domain
- Other issues in the remit of Council planning are noted in respect of the significant number of objections received, and which include noise transfer and access/egress security within the building and its site, as well as parking.

Planning comment: Planning notes that no concerns were raised in relation to the built form, given that only the proposed signage zones would be visible from the public domain. Assessing Officer has prepared a detailed response in the LEP section above to demonstrate how each of these operational concerns have been addressed through additional information and/or consent conditions.

1.3. Development Engineer

PARKING COMMENTS

Existing Situation & Parking Demand

The subject tenancy lies on the basement level within a larger building comprising of a mixed commercial/residential development approved under DA/295/2000.

The commercial component previously housed Randwick Rugby Club but is currently occupied by a Dan Murphy's liquor store approved under DA/284/2015 by the Land & Environment Court. A cafe is also approved for the site under CDC/285/2019 but is yet to commence operations.

The subject tenancy is currently vacant but was previously used as a gymnasium when it formed part of Randwick Rugby Club.

Above the commercial levels the residential component comprises of 54 dwellings which are formally separated from the commercial component via a Stratum Plan of Subdivision under DP 1050760.

The carpark is accessed via a two-way driveway from Brook Street and comprises of 2 levels totalling around 128 spaces. The ground level (behind Dan Murphy's) was

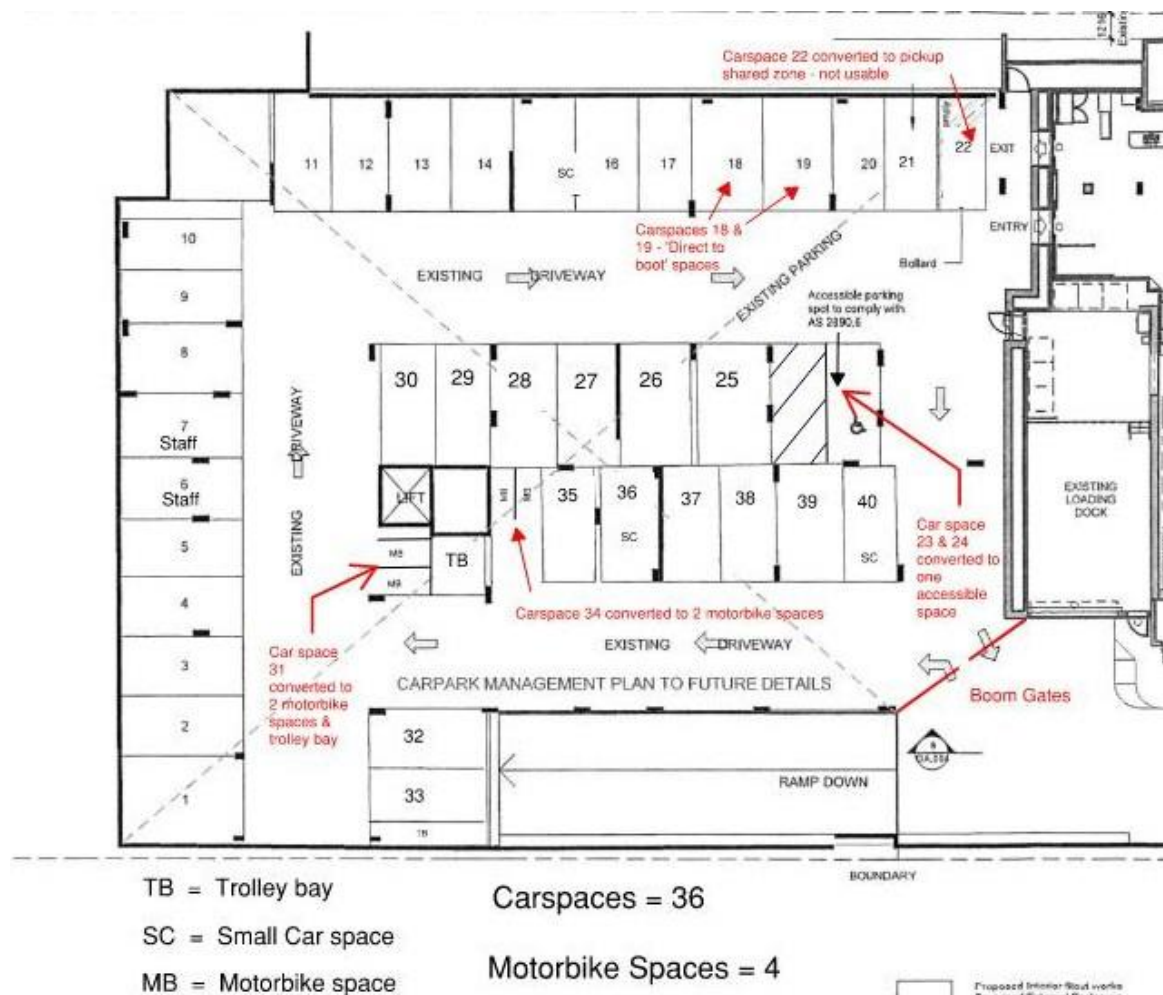
approved for 40 spaces and is dedicated to the commercial stratum containing Dan Murphy's, the future café and the tenancy subject to this application.

Adopting the general commercial parking rate of 1 space per 40m² as stated in the DCP The Dan Murphy's tenancy would require 25 spaces, the café tenancy two spaces and the subject tenancy 10 spaces being a total of 37 spaces. The 40 spaces provided were therefore sufficient to serve all of the commercial areas of the building at the time of the original DA approval.

During site inspection on the 17/11/2022 it was observed that the parking layout varies slightly to what was previously approved as two of the carspaces have been converted to motorbike parking and the configuration of disabled spaces has changed. As a result, the carpark now provides a total of 36 car spaces and 4 motorbike spaces

The existing layout as marked out on site is shown below in sketch prepared by the Development Engineer following site inspection on 17/11/2022. Changes to approved layout highlighted in red.

Figure 1.3.1 – Existing parking layout – Commercial Carpark



As indicated above the existing 36 vehicle spaces comprise of 2 staff spaces, 1 accessible space, 2 direct to boot "spaces (for Dan murphy's) and 3 small carspaces. Apart from the staff parking and the "direct to boot" parking, none of the carspaces are specifically labelled for use by Dan Murphy's only.

The on-site commercial parking is also not free, with a minimum charge of \$10 for 1 hour parking and increasing incrementally up to \$60 for stays of 4 hours +. Parking is only

free for customers of Dan Murphy's after production of a receipt. It is understood the fee is used to discourage non-customers from using the carpark which can become an issue especially during the summer months.

At the time of site inspection (1:30pm on 17/11/22) the vacancy rate of the carspaces was high with little demand. It is anticipated during peak times for the Dan Murphys store such as Friday or Saturday nights demand would be higher but would unlikely ever exceed the capacity of the carpark. Some spare capacity is therefore available for other uses.

The hours of the Dan Murphys store were approved by DA/284/2015 as 10am-8pm Mon -Fri 10am-9pm Thursday – Saturday and 10am-7pm Sundays. The café is approved for 7am -10pm Mon-Saturday and 7am-8Pm Sundays and public holidays.

On street parking is also available in front of the site however it is generally time restricted and is heavily utilised with limited availability especially during the summer months due to its location close to Coogee Beach and Town Centre. At the time of site inspection however a number of on-street spaces were available.

Proposed Development – Parking Demand

The subject tenancy is indicated as having a GFA of 392m2. Gyms are considered as indoor recreational facilities of which Part B7 of Council's DCP specifies a parking rate of 1 space per 25m2. This represents an intensification of use of the tenancy when compared to the parking rate of 1 space per 40m2 used for the assessment of the original DA.

Hence when adopting the higher parking rate, **the parking demand for the subject tenancy will increase from 10 spaces to 16 spaces and increase the total parking demand for the commercial component from 37 to 43 spaces.** The existing parking provision of 36 spaces and 4 motorbike spaces would therefore not numerically meet this additional demand created by the gym.

It should be noted however that the expected peak times of the gym will not likely coincide with the expected peak of the Dan Murphy's store. For example the proposed gym will open at 6am on a weekday with a morning parking peak expected to occur soon after (around 7:30-8:30am), however the Dan Murphy's store does not open till 10am thereby avoiding any coincident parking peaks with the gym. In the afternoon and evening the difference is less pronounced with some overlap potentially occurring however the afternoon peak for the gym would still likely occur before the evening parking peak for the Dan Murphy's store.

When considering this additional aspect, the perceived parking shortfall is not overly significant since some of the carspaces can be shared between the tenancies. The existing parking provision is expected to accommodate the additional parking demand and the proposal is therefore not expected to create any unacceptable parking impacts and the application can be supported on parking grounds. Use of the commercial carpark will however now occur much earlier and the potential acoustic impacts of this on neighbouring residents should be considered by Council's Environmental Health section.

Given the variance in the parking peaks it is not considered appropriate to exclusively dedicate carspaces to a particular tenancy as part of this consent so as to allow for some flexibility in the allocation during the day and evening. The only exception to this will be the required exclusive allocation of two carspaces to staff of the gym. There are currently four spaces in the carpark that are dedicated exclusively to the Dan Murphy's store and are labelled as "staff" (2 spaces) and "direct to boot" (2 spaces). The remainder of the spaces are to be shared between the commercial tenancies.

Pedestrian Access to proposed gym

Pedestrian Access to the proposed gym from the commercial carpark is not ideal with the submitted documentation and site inspection indicating patrons will need to walk

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down the driveway back out to the Brook Street and then enter through the front entrance. This is due to the lack of any direct access from the ground floor commercial carpark to the subject tenancy in the basement. This is a leftover consequence from its original use as Randwick Rugby Club which encompassed all of the commercial component of the building, hence any direct access to the basement level from the commercial carpark would have been unnecessary. The Stratum plan also does not facilitate any such arrangement.

Should the application be approved the risk to pedestrians from increased pedestrian use of the driveway is of concern and would be present for any proposed use of the basement tenancy. It is considered the only way to address this issue is to provide a shared zone, together with associated signage immediately adjacent to the wall of the building and along the length of the internal driveway as approximately illustrated in picture below.

It should also be noted that during early morning hours it is more likely that patrons will park on-street in front of the site as this would be more accessible to the entrance to the gym.

Figure 1.3.2 - Required shared zone



Appropriate conditions have been included in this report for a shared zone to be provided prior to occupation of the development.

Waste Management Comments

The applicant is required to submit to Council and have approved by Council's Director Planning, a Waste Management Plan (WMP) detailing waste and recycling storage and disposal for the development site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the gym will operate.

Appendix 2: DCP Compliance Table**3.1 Section B2: Heritage**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
1	Introduction		
1.12 Development in the vicinity of heritage items and heritage conservation areas.	All new development adjacent to or in the vicinity of a heritage item or heritage conservation area needs to be considered for its likely effect on heritage significance and setting.	Council's Heritage officer did not raise concern with the proposed built form or the external signage locations. However, operational concerns were identified with the original proposal, which have been addressed via amended information and consent conditions. Refer to LEP discussion section above for assessment officer response.	Yes

3.2 Section B6: Recycling and Waste Management

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3 – Demolition and Construction 4 – On going operation	A waste management plan is required to provide details of the construction phase and ongoing operations.	A waste management plan has been submitted outlining the process for construction and that materials will be stored and removed from site in accordance with the existing arrangements for the commercial stratum lot. Further detail for recycling and waste processing will be secured via a standard condition of consent to the satisfaction of the principal certifying authority in accordance with Council's policies.	Yes

3.3 Part B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3	Parking & Service Delivery Requirements		
3.2	Where development	The proposed change of use will	Yes, on merit.

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DCP Clause	Controls	Proposal	Compliance
Vehicle Parking Rates and 3.3 Exception to the Parking Rates	comprises an extension, modification or change of use to an existing development, Council will generally only require that additional parking be provided to cater for the additional demands arising from increases in floor space or changes of use.	increase the parking demand from the previous 10 car space allocation to 16 and an increased demand of 6 spaces. Notwithstanding, the existing carpark can accommodate the increased demand due alternate peak periods for the café and liquor retailer use, along with the high turnover due to paid parking arrangements. In addition, the site will provide for additional bicycle racks, is within walking distance of the medium density residential catchment and has a bus stop adjacent to the commercial lobby entrance to encourage sustainable and active transport options. Refer to key issues section above for detailed merit assessment.	
4	Bicycles		
4.2 Bike parking rates and controls	1 rack per 10 parking spaces	2 bicycle racks are currently provided within the carpark, however an additional 2 will be secured via a consent condition to ensure adequate facilities are provided to gym patrons and to encourage sustainable and active transport uptake. Refer to key issues section above for full details.	Yes, subject to condition.

3.4 Section B9: Management Plan

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
1 - 9	Plan of management to accompany applications requesting late night trading or with potential amenity impacts.	The submitted preliminary plan has included the information required by Council under Section B9 and has used the controls as sub-headings to guide the indoor recreation facilities management framework. As such, the preliminary document has been prepared in accordance with Council's policies and includes key information to limit patron capacity, implement acoustic, security and sign posting measures to protect amenity, complaint reporting and handling, parking and transport, noise management, CCTV surveillance, deliveries, and waste management. A final	Yes, subject to condition.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		signed Plan of Management has been conditioned for the review and approval of Council's Environmental Health team prior to the commencement of occupation to ensure that these agreed measures are in place before any operation of the proposed use.	

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3.5 Section D6: Neighbourhood Centres

DCP Clause	Controls	Proposal	Compliance
2.3	Floor space ratio		
	0.9:1	No change proposed.	Yes
3	Building design		
	<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>iv) Distinguish residential entries from commercial/retail entries in the case of mixed-use development.</p> <p>v) Design shopfronts, including entries and windows, to reinforce any prevalent character in the centre.</p> <p>vi) All street frontage windows at ground level are to have clear glazing. Large glazed shopfronts should be avoided, with window configurations broken into discrete sections to ensure visual interest.</p> <p>vii) All facade elements must be contained within the site boundaries.</p> <p>viii) Building services, such as drainage pipes shall be coordinated and integrated with overall facade and balcony design.</p>	The proposed signage zones respect the façade and design features of the existing building by location these area as a part of the fascia or to screen the plant enclosure from the street perspective.	Yes
3.6	Signage		

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DCP Clause	Controls	Proposal	Compliance
	<p>i) The location, size and design of signage must integrate with the architectural detail of the building and act as a unifying element to the neighbourhood centre.</p> <p>ii) Signage must not:</p> <ul style="list-style-type: none"> • obscure important architectural features; • dominate the architecture of buildings; • protrude from, or stand proud of, the awnings; • project above any part of the building to which it is attached; • cover a large portion of the building façade. <p>iii) Avoid fin signs, signage on canvas blinds, signage on roller shutters and projecting wall signs and large elevated solid panel business and building name signs including those fixed on parapets or roofs.</p> <p>iv) Ensure that signs provide clear identification of premises for residents, visitors and customers.</p> <p>v) All premises must display a street number. The height of these numbers should be legible but not a dominating feature, and no less than 300mm presented in a clear readable font.</p> <p>vi) Signage must relate to the business being carried out on the property.</p> <p>vii) Early building names (on parapets, pediments, etc) should be preserved wherever possible.</p> <p>viii) Any signage structure or sign must have regard to the impact on residential occupants in terms of illumination and visual impact.</p>	<p>As discussed, above the proposed signage zones have been appropriately located and would not obscure or dominate the street façade and does not protrude from the existing building envelope.</p>	<p>Yes</p>
5	Amenity		
5.2	Acoustic and visual privacy		

DCP Clause	Controls	Proposal	Compliance
	<p>i) Developments are to be designed to minimise noise transmission by:</p> <ul style="list-style-type: none"> - Locating busy noisy areas next to each other and quieter areas next to each other; - Locating bedrooms away from busy roads and other noise sources; - Using storage or circulation areas within a dwelling to buffer noise from adjacent apartments, mechanical services or corridors/lobbies. - Avoid locating wet areas, such as toilets, laundries and kitchens, adjacent to bedrooms of adjoining dwellings. <p>iv) Operating hours must be submitted with the DA. Should the development require deliveries and/or operation of machinery outside of standard hours (7.30am to 5pm, Monday to Friday), an acoustic report must accompany the DA. The acoustic report must be prepared by a suitably qualified acoustic consultant.</p>	<p>The proposed works are not considered to result in any significant adverse visual privacy impacts, noting the basement location and access arrangements.</p> <p>Notwithstanding, the proposed change of use and operational trading hours of operation of 5am to 12pm midnight are not supported for the reasons discussed in the key issues section above and have been reduced from the original proposal as a consent condition. In addition, a reviewable 12-month trial period will be implemented for extended morning and night hours.</p>	Refer to key issues section.

3.6 Section D13: Late Night Trading

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
1.3 – 2	Hours of operation need to be considered in the surrounding context for change of use application when late night trading hours are proposed (i.e., 10pm)	Hours of operation proposed from 5am to 12pm midnight to be reduced via consent condition and managed as a partial operational trial period. Refer to key issues discussion above.	Yes, subject to conditions.

Responsible officer: Ferdinando Macri, Senior Environmental Planning Officer

File Reference: DA/214/2022

Development Consent Conditions (Medium density residential)



Folder /DA No:	DA/214/2022
Property:	102-104 Brook Street, COOGEE NSW 2034
Proposal:	Fitout and use of the basement level of an existing mixed-use building as a gymnasium including external signage.
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2021* 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:

Plan	Drawn by	Dated
Site Plan A011 (Rev. C)	Studio Frenne	10/03/2022
Demolition Plan A050 (Rev. C)	Studio Frenne	10/03/2022
Proposed Floor Plan A100 (Rev. C)	Studio Frenne	10/03/2022
Fixtures, Equipment and Furniture Plan A130 (Rev. D)	Studio Frenne	17/11/2022
External Elevations A300 (Rev. C)	Studio Frenne	10/03/2022
External Signage Details A610 (Rev. C)	Studio Frenne	10/03/2022

Signage zones

- The proposed signage zone 02 shown in plans A300 and A610 is not to be internally illuminated and shall be converted to a non-illuminated sign. Details of compliance are to be provided on the construction certificate to the satisfaction of the private certifier.

Bicycle Storage

- An additional 2 bicycle storage racks are to be provided within the commercial carpark for indoor recreation patrons. Details of compliance are to be provided on the construction certificate to the satisfaction of the private certifier.

Carpark Allocation

- Carparking must be provided for the proposed gym in accordance with the following requirements
 - Carparking is to be free for staff & patrons of the approved gym.

- B) Two car spaces in the commercial carpark on the ground floor are to be exclusively dedicated to staff of the proposed gym.
- C) All other available car spaces in the commercial carpark are to be generally shared with the other commercial tenancies, however a minimum of 14 spaces must be available for use by patrons of the gym at all operational times.

Pedestrian Access from Commercial carpark

5. To minimise risk for pedestrians accessing the gym from the commercial carpark, the following measures are to be implemented:

- A minimum 1.2m wide shared zone is to be established on the exit driveway immediately adjacent to the wall of the building between the Council footpath on Brook Street and the boom-gate entrance to the commercial carpark.
- Appropriate signage is to be installed in the carpark and exit driveway indicating the presence of the shared zone.

The line marking for the shared zone and associated signage are to be to the satisfaction of the Principal Certifier and must be installed prior to occupation of the development.

Public Utilities

6. 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 with all works completed prior to occupation of the development.

Waste Management

7. A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, 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.
- 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.
- The procedures and arrangements for on-going waste management of the gym 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

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 2021*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

8. 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

9. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of **\$242,286.00** the following applicable monetary levy must be paid to Council: \$2,422.86.

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

Long Service Levy Payments

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

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

Security Deposits

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

- \$5,000.00 - Damage / Civil Works Security Deposit

The security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the works which confirms that there has been no damage to Council's assets and infrastructure.

The developer/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge and other assets prior to the commencement of any building/demolition works.

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To obtain a refund of relevant deposits, a Security Deposit Refund Form is to be forwarded to Council's Development Engineer upon issuing of an occupation certificate or completion of the civil works.

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 2021*, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia & Relevant Standards

12. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and section 69 of the *Environmental Planning & Assessment Regulation 2021*, 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).
13. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifier.
14. Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report **Condition 38 vii)**, with reference to relevant documentation and the control of structure borne noise. This must be done by a Suitably Qualified Acoustic Consultant* (see definition below). This work will be to the satisfaction of the accredited certifier.

All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.

*Note: *Suitably Qualified Acoustic Consultant* means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member firm.

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 2021* and to provide reasonable levels of public health, safety and environmental amenity.

Certification and Building Inspection Requirements

15. 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 the 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.

Public Liability

- 16. 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.

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 2021* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

- 17. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning & Assessment Regulation 2021*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.
- 18. The applicant is to engage the services of a suitably qualified person to respond to enquiries and complaints made by the community or Council in relation to the site and construction work.

A complaints register is to be maintained to record all such enquiries, complaints, dates and actions taken in response to same, which is to be made available to Council officers upon request.

Building & Demolition Work Requirements

- 19. 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 the Environment Operations (Waste) Regulation 2014;
 - NSW EPA Waste Classification Guidelines (2014);
 - Randwick City Council Asbestos Policy (adopted 13 September 2005).

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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.

Details of Compliance must be provided to the Principal Certifier for the development and Council, prior to commencement of site works.

Public Safety & Site Management

20. 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

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

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

Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed)	<ul style="list-style-type: none">• Monday to Friday - 7.00am to 5.00pm• Saturday - 8.00am to 5.00pm

below)	<ul style="list-style-type: none"> • Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm only • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Building Encroachments

23. 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 2021*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

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

Fire Safety Certificates

25. Prior to issuing an interim or Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2021*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

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

Structural Certification

26. 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 Certifying Authority*. A copy of which is to be provided to Council with the Occupation Certificate.

Security

27. Prior to the issue of an Occupational Certificate CCTV surveillance systems are to be installed within the gym, the pedestrian access lobby, and the commercial carpark to the satisfaction of the accredited certifier.

Noise

28. Prior to the issue of an Occupational Certificate a report, prepared by a suitably qualified and experienced consultant in acoustics, shall be submitted to the Principal Certifier and Council, which demonstrates and certifies that noise and vibration from the development satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority Noise Policy for Industry 2017 and conditions of this development consent (including any relevant approved acoustic report and recommendations), to the satisfaction of Council. The assessment and report must include all relevant fixed and operational noise sources.
29. A plan of management shall be submitted to and approved by Council prior to occupation or use of the development, which details the measures to be implemented to:
- o Ensure compliance with the relevant conditions of development consent and relevant approved acoustic reports/s,
 - o Ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,
 - o Minimise the potential environmental and amenity impacts upon nearby residents,
 - o Effectively minimise and manage anti-social behaviour,
 - o Effectively manage and respond to resident complaints,
 - o Ensure responsible service of alcohol and harm minimisation,
 - o Provision of adequate security and surveillance,
 - o Ensure that the maximum number of patrons does not exceed the authorised capacity, in accordance with Council's consent.
30. Prior to issue of any Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A5.2(1)(e) of the *Building Code of Australia*, must be submitted to the Principal Certifier.
31. Prior to the issue of an Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a Noise Limiter/s Verification Report to the written satisfaction of the Principal Certifying Authority that the development complies with the requirements outlined in the Acoustic report **Condition 41** and all relevant noise criteria outlined in this notice of determination.

All sound amplification equipment in the premises must be controlled by a Root Mean Square (RMS) noise limiter with an attack time constant not exceeding 0.5 seconds, release time constant not less than 1 second and a compression ratio equal of at least 20:1. The limiter shall be set by a suitably qualified acoustic consultant* as per the manufacturer's specification. The consultant must ensure that resultant amplified sound complies with the Council's criteria for entertainment noise.

All Limiters and all post-limiter equipment including power amplifiers must be tamper proof and only operable by the acoustic consultant, a licensee and business owner who must keep a completed report on the premises.

This report must certify that limiter/s were installed, tested and calibrated so amplified noise will comply with the noise criteria outlined in this notice of determination.

The limiter/s and sound amplification system must be maintained and not tampered with. Unauthorised modifications are not made which are contrary to the report. Repairs and replacements may be made to the system as necessary with any like component but must not be capable of increasing the permitted noise amplification levels outlined in the report.

Any additional amplification equipment must be routed through and controlled by the limiter/s, i.e. the limiters and amplified sound system on the premises are capable of receiving and controlling that equipment, and such that use of the equipment must not cause amplified sound which exceeds the cumulative entertainment noise controls in this consent.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

32. Prior to the issue of any Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of the Principal Certifier that the development complies with all air borne and structure borne noise criteria requirements as part of this consent.

The acoustic validation assessment shall be undertaken onsite with the equipment proposed used in accordance with the approved Plan of Management. Once validated the POM will be signed off by the Acoustic Consultant and submitted to Council.

Note: *A *Suitably Qualified Acoustic Consultant* means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member firm.

33. Prior to the issue of any Occupation Certificate an inspection of the structural items required to prevent structure borne noise must be undertaken to certify that all items have been installed to the approved design, via Plan No: Fixtures, Equipment and Furniture Plan A130 (Rev. D), prepared by: Studio Frenne, dated: 17/11/2022, Council Ref: P00310463. If the structural items installed do not achieve the same or greater noise mitigation effect outlined by the Acoustic Consultant an Occupation Certificate must not be issued until compliance is achieved.

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 2021*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Fire Safety Statements

34. 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 2021*.

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.

Noise

35. Noise from the development must not cause an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997.

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If "offensive noise" complaints are substantiated by an authorised officer under the Protection of the Environment Operations Act, 1997 an acoustic report must be submitted for review and approval by the Planning Manager of Randwick City Council. The submitted acoustic report must be prepared by a suitably qualified acoustic consultant and include appropriate noise mitigation measures that will ensure the premises cease to cause "offensive noise" during its permitted use.

Note: A Suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member.

36. Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA [Noise Policy for Industry 2017 \(NPfI\)](#).

Note: The stricter of the amenity/intrusiveness criteria becomes the prevailing criteria for the development.

In addition, noise from commercial plant, when assessed as an $L_{Aeq, 15 \text{ min}}$ must not exceed the $L_{A90, 15 \text{ min}}$ background noise level by more than 3dB when assessed inside any habitable room of any affected residence or noise-sensitive commercial premises when in use. The noise level and the background noise level shall both be measured with all external doors and windows of the affected residence closed.

Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premise.

37. Noise and vibration from gymnasiums and other exercise facilities must satisfy the following additional requirements:

- i) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected receiver.
- ii) Noise from the use when assessed as an $L_{A10, 15 \text{ minute}}$ enters any residential use through an internal to internal transmission path is not to exceed the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7.00am and 10.00pm.
- iii) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.
- iv) Notwithstanding with the above noise from the use of the gym must not be audible within any habitable room in any residential use between the hours of 10.00pm and 7.00am (*8am on Sundays and public holidays).

Inaudibility should be taken as the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) minus 10dB in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) inside a habitable room of any affected residential accommodation.

- v) Structure borne noise emanating from the use of the premises is not to exceed the following criterion (when doors and windows are closed):
 - Commercial premises - $L_{A1, \text{ Slow } 15 \text{ minute}} \leq L_{A90, 15 \text{ minute}} + 3 \text{ dB(A)}$
 - Residential premises - $L_{A1, \text{ Slow } 15 \text{ minute}} \leq L_{A90, 15 \text{ minute}} + 0 \text{ dB(A)}$.

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vi) The following site-specific noise control conditions are required to be complied with:

- No group fitness classes are permitted onsite.
- The fire exit door may not be propped open during the gym operation.
- The installation of a subwoofer is not permitted.
- All windows and doors are to remain closed between the hours of 05.00am to 07.00am and 10.00pm to 12.00 midnight.

vii) All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by Sam Demasi and Lee Hudson of VMS AUSTRALIA PTY LTD, Dated: 05/04/2022, Ref: 21141 Rev 1, Titled: DA Acoustic Assessment Proposed Gymnasium Upgrade 102 - 104 Brook Street Coogee, Council Ref: D04555968 and supplementary Acoustic Report prepared by Sam Demasi of VMS AUSTRALIA PTY LTD, Dated: 03/11/2022, Ref: 21141 Rev 0, Titled: Response to RCC Addendum Response, dated 29/06/2022 Proposed Upgrade of Existing Gym 102 - 104 Brook Street Coogee NSW 2034, Council Ref: D04765212 must be implemented in the development prior to the commencement of its use.

Notes:

L_{eq} , L_{01} , L_{10} and L_{90} , metrics and 'A' (weightings) are as per the definitions in the standard AS1055-2018 Acoustics - Description and measurement of environmental noise.

The background noise level $L_{A90, 15 \text{ minute}}$ is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver.

Where the $L_{A10, 15 \text{ minute}}$ noise level is below the threshold of hearing, T_f at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of T_f corresponding to that Octave Band Centre Frequency shall be used instead.

38. Following receipt of the report as per **Condition 32** the report is to be kept on the premises at all times. From this point forward the occupier must ensure the following:

- (a) The limiter/s and sound amplification system must be maintained and not tampered with.
- (b) Unauthorised modifications are not made which are contrary to the report.
- (c) Repairs and replacements may be made to the system as necessary with any like component but must not be capable of increasing the permitted noise amplification levels outlined in the report.
- (d) Additional amplification equipment must not be brought onsite which if used could cause cumulative entertainment noise (including amplified sound) from the development to exceed controls in this consent. This does not apply to equipment that is only used when routed through and controlled by the limiter/s, i.e. the limiters and amplified sound system on the premises are capable of receiving and controlling that equipment.

39. The maximum number of persons (including staff, patrons and performers) permitted in the premises at any one time is 60 persons.

The shift manager/owner is responsible for ensuring the number of persons in the premises does not exceed that specified above.

40. Operation of the use of the gym must not result in the transmission of any perceptible vibration to an occupiable area within a separate residential or commercial premise.
41. An acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, must be provided to Council upon request from an authorised officer under the *Environmental Planning and Assessment Act 1979*, which demonstrates and confirms that the relevant provisions of the *Protection of the Environment Operations Act 1997* and the noise criteria and requirements contained in this consent has been satisfied (including any relevant adopted acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.
42. The operator of the business must establish and maintain a formal and documented system for the recording and resolution of complaints made to the premises by residents. All complaints are to be attended to in a courteous and efficient manner and referred promptly to the manager (or other nominated position). The appropriate remedial action, where possible, is to be implemented immediately and the Manager (or nominated position) shall contact the complainant within 48 hours to confirm details of action taken. The Complaints register shall be made available to Council officers and Police upon request.
43. Speakers and/or noise amplification equipment must not be installed or played in any outdoor areas or directed towards outdoor areas.
44. The premises must be ventilated in accordance with the *Building Code of Australia* and *AS1668.1 and AS1668.2 - The Use of Ventilation and Air-conditioning in Buildings - Mechanical Ventilation in Buildings*.
45. If Olympic and or powerlifting weights are to be used on the premises the following requirements apply:-
 - A site specific Olympic lifting platform must be installed and designed to meet the noise criteria outlined in this consent.
 - The lifting rack must not be directly bolted to the floor.
 - The Olympic platform must be located on the spring vibration isolated floor.
 - Only the use of rubber encased Olympic weights is permitted.
 - Install additional weight silencer pads following direction from an authorised officer under the *Environmental Planning and Assessment Act 1979*, if substantiated noise complaints are received.

For the purpose of this condition, Olympic and or Powerlifting weights are defined as per below:

In reference to 'Olympic weights', equipment described by and or reasonably equivalent to Section 2 of the *IWF (International Weightlifting) Guidelines Sport Equipment Licensing* document, published by the IWF on 6 December 2013.

In reference to 'powerlifting weights', equipment described by or reasonably equivalent to that described by the *Bars and Discs and Collars subsection of the Equipment and Specifications section of the IPF (International Powerlifting Federation) Technical Rules Book 2021*, updated on 31 December 2021.

46. The use must always be operated / managed in accordance with the Plan of Management that has been approved by Council via **Condition 29** of this consent. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.
47. The hours of operation for the premises are regulated by a reviewable condition as follows:
The hours of operation must be restricted to between 7:00am and 10:00pm the following day Mondays to Sundays inclusive.

Notwithstanding with the above, the use may operate between 6:00am to 7:00am and 10:00pm and 11:00pm for a trial period of 1 year from the date of issue of the Occupation

Certificate. Council's Health, Building and Regulatory Services is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to Council@randwick.nsw.gov.au.

Should the operator seek to continue the extended operating hours outlined in above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions and any substantiated complaints received.

Environmental Amenity

48. External lighting (pedestrian and vehicular driveway) to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. All external lighting shall comply with the requirements of AS4282 – Control of the obtrusive effects of outdoor lighting.
49. The facility shall signpost the internal access stairwell and lift directing gym patrons to “keep noise to a minimum while entering and/or exiting the premise and to be mindful of surrounding residential properties”.

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Development Application Report No. D79/22

Subject: 163 Coogee Bay Road, Coogee (DA/334/2021)

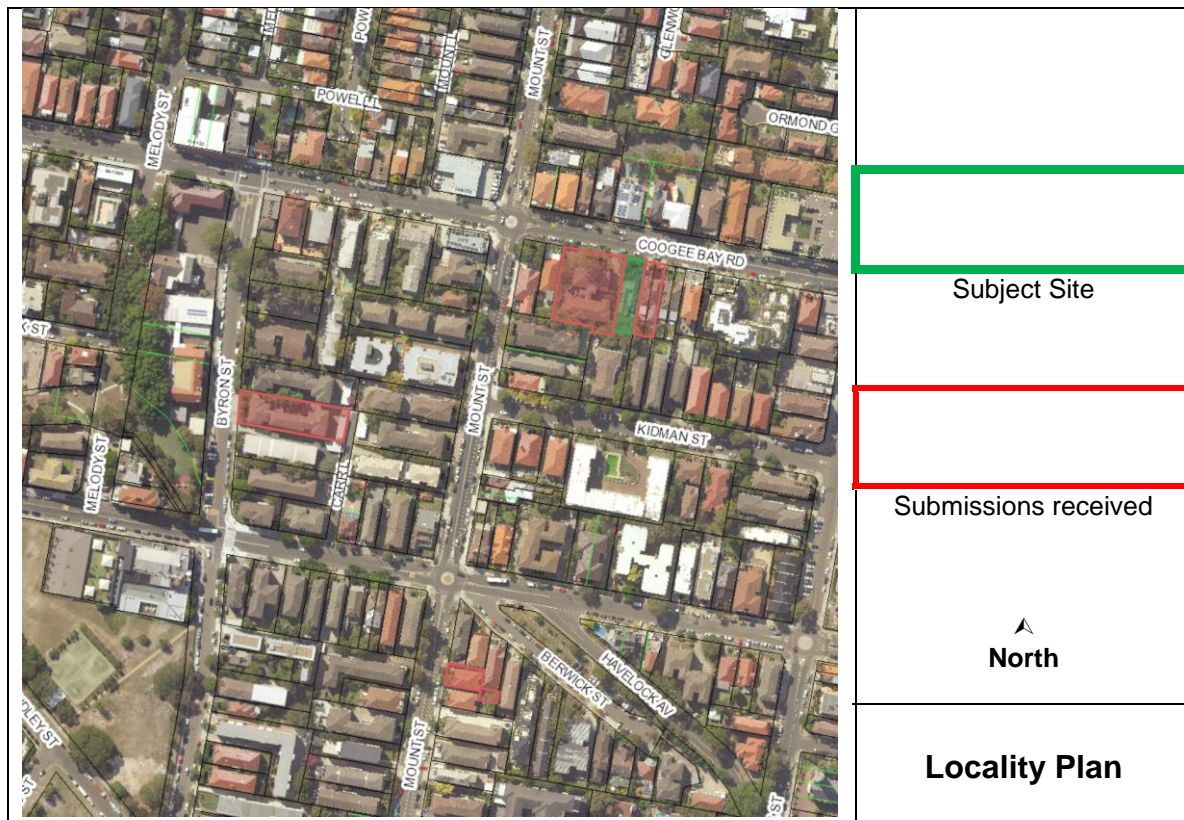
Proposal:	Demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in basement.
Ward:	East Ward
Applicant:	Mr Z Jawaro
Owner:	Mr A L Lloyd & Mrs V L Lloyd
Cost of works:	\$3,328,083
Reason for referral:	New residential flat building (SEPP 65) & 18 submissions received

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 Section 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to development Application No. DA/334/2021 for the demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in the basement, at No. 163 Coogee Bay Road, Coogee subject to the development consent conditions attached to the assessment report.

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Objectors not shown on map:

- 41 Dudley Street, Coogee
- 251 Carrington Road, Coogee
- Randwick Heritage Action Group x 2 – 4/152 Brook Street, Coogee
- 64 Brook Street, Coogee
- 4/138 Beach Street, Coogee

1. Executive summary

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

- The development is considered sensitive development to which SEPP 65 applies.
- Eighteen (18) unique submissions by way of objection were received.

The proposal seeks development consent for the demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in the basement.

The first amended application was submitted on 01/08/2022 which included the following amendments:

- Reduction to the building height by lowering the building 800mm.
- Widened driveway entry and kerbs.
- New landscaped roof cover over the entry driveway.
- Relocation of the hydrant booster adjacent to the driveway.
- Entry corridor landscaping relocated to the eastern side.
- Amended basement level garbage areas, bicycle parking and storage locations.
- Reorientation of the rear ground floor level unit bedrooms, setback 1m from the side boundaries and new north facing windows.
- New column on the ground floor level under the cantilever on the northern terrac.
- Removal of the level 1 rear terrace walls.
- New sliding doors to the eastern façade adjacent to the dining area for units on levels 1-3.

- Rear bedroom terraces on level 2 combined to a singular terrace.
- Curved roof form to the level 3 fire stairs.
- Increased eastern side setback to bedroom 2 and bathroom at level 3.
- Relocation of air conditioning and hot water units from the roof to the carpark.
- Reduction to the northern roof overhang at level 3.

The second amended application was submitted on 24/11/2022 which included revised existing ground levels shown on the architectural plans. The changes resulted in a minor height non-compliance (0.38m) at the front of the building and a Clause 4.6 Written Submission was provided by the Applicant.

The proposal has been assessed against the relevant and numeric provisions of SEPP 65, the ADG and the RDCP. A detailed assessment of the non-compliances has been provided in the Key Issues section. The key issues associated with the proposal relate to the 0.38m height non-compliance, view impacts, external wall height, and side boundary fences/retaining walls.

A comprehensive assessment of the proposed view impacts to the neighbouring properties has been undertaken in accordance with the planning principle and the four step test in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. The amended application skillfully reduced the overall building bulk, height and roof form of the upper level to address view impacts and the external wall height non-compliance. The proposal satisfies the objectives and controls regarding view sharing and overall results in:

- a minor impact on views obtained from 6/153-161 Coogee Bay Road,
- a minor-moderate impact on views obtained from 7/153-161 Coogee Bay Road,
- a negligible impact on views obtained from 11/153-161 Coogee Bay Road,
- a moderate impact on views obtained from 12/153-161 Coogee Bay Road; and
- a minor-moderate impact on views obtained from 15/153-161 Coogee Bay Road.

The proposed number of storeys is consistent with development within the immediate streetscape character, and as the site is considered to be significantly underdeveloped within the context of the R3 zoning, any new development may result in unavoidable view impacts given that it has been established that the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.

The Clause 4.6 Written Request and assessment of the 0.38m height non-compliance is provided in Section 7. It is considered that the written request has adequately demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

A detailed assessment of the wall height control non-compliance is provided in the Key Issues section. It is considered that the wall height upholds the objectives in Part 4.4 of the RDCP in that the development is a suitable number of storeys within the context of the streetscape, the floor to ceiling heights are achievable and comply with the 2.7m requirement (i.e. 3.1m floor to floor), and the bulk and scale of the upper level does not result in significant adverse amenity or visual impacts to the neighbouring properties in terms of overshadowing, privacy or views.

With regards to the side boundary retaining walls and fences, the subject site is significantly underdeveloped within the R3 zone and excavation is required to accommodate a suitable parking arrangement that complies with Council's RDCP and the relevant Australian Standards, including level and usable private open space within the side and rear setback areas. The retaining walls and pedestrian/vehicle entry are considered satisfactory by Council's Heritage Officer as discussed in the assessment of Clause 5.10 of the RLEP.

Conditions of consent have been imposed to ensure the side elevation privacy screens are fixed, the solar panels do not exceed the height of the roof parapet and the side boundary fence heights are reduced in accordance with Council's 2.2m fence height control. As conditioned, the amended proposal is considered a positive outcome for the site and would not result in any significant adverse

visual or amenity impacts to the streetscape or the desired future character of the R3 zone. The proposal is therefore recommended for approval.

2. Site Description and Locality

The subject site is known as 163 Coogee Bay Road and is legally described as Lot 6 in DP 69376. The site is 567m², is rectangular in shape and has a 12.7m frontage to Coogee Bay Road to the north and side boundaries of 44.8m to the east and west. The site contains detached two storey dwelling-house with a hipped roof. The dwelling-house is raised above the street level and the site contains dense vegetation and planting (Figure 1). Pedestrian and vehicular access is provided by the steep driveway that connects to a carport.

The site slopes approximately 6.21m from the southern rear boundary to the northern front boundary. There is a slight west to east fall of 0.47m through the middle of the site.

The subject site adjoins a 4-5 storey residential flat building to the west at 153-161 Coogee Bay Road as seen in Figure 2 below. At the eastern side, the site adjoins two items of local heritage significance at 165 and 167 Coogee Bay Road. The heritage items are semi-detached dwellings as seen below in Figure 3.



Figure 1 – Existing streetscape and limited view of subject site due to existing vegetation



Figure 2 – 153-161 Coogee Bay Road to the west of the site

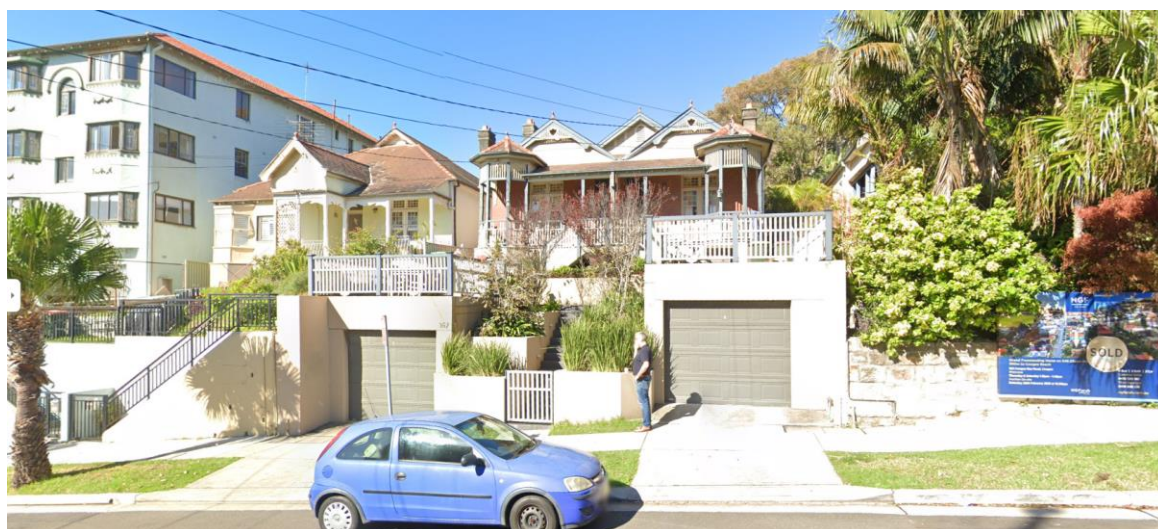


Figure 3 – 165-167 Coogee Bay Road heritage items to the east of the site

3. Relevant history

N/A

4. Proposal

The proposal seeks development consent for the demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in basement.

On 31/05/2022, draft amended plans were submitted to Council to address concerns raised by Council's Heritage Officer, the DEAP and the Assessment Officer. The changes included lowering the building, 2 options for the roof structure over the vehicle/pedestrian entry, revised solar diagrams, height plane diagrams, and visual impact photomontages. Feedback was provided to the applicant and further amended plans were lodged on 01/08/2022. The first amended plans included the following changes to the application:

- Reduction to the building height by lowering the building by 800mm.
- Widened driveway entry and kerbs.
- New landscaped roof cover over the entry driveway.
- Relocation of the hydrant booster adjacent to the driveway.
- Entry corridor landscaping reallocated to the eastern side.
- Amended basement level garbage areas, bicycle parking and storage locations.
- Reorientation of the rear ground floor level unit bedrooms, setback 1m from the side boundaries and new north facing windows.
- New column on the ground floor level under the cantilever on the northern terrac.
- Removal of the level 1 rear terrace walls.
- New sliding doors to the eastern façade adjacent to the dining area for units on levels 1-3.
- Rear bedroom terraces on level 2 combined to a singular terrace.
- Reduction to the level 3 kitchen cupboards.
- Curved roof form to the level 3 fire stairs.
- Increased eastern side setback to bedroom 2 and bathroom at level 3.
- Relocation of air conditioning and hot water units from the roof to the carpark.
- Reduction to the northern roof overhang at level 3.

On 02/11/2022, the applicant submitted further information in relation to the first amended plans as requested by Council's Assessment Officer. This included an updated BASIX, compliance calculations (GFA, deep soil, solar access, and landscaping), updated shadow diagrams, 3D wall height plane and full-length elevations depicting the side boundary fence heights.

On 14/11/2022, Council's Assessment Officer requested further changes which revised the existing ground levels shown on the architectural plans. The second amended plans were submitted on 24/11/2022. The changes resulted in a minor height non-compliance (0.38m) at the front of the building and a Clause 4.6 Written Submission was provided by the Applicant.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. The following submissions were received as a result of the notification process:

- 41 Dudley Street, Coogee
- 15 Byron Street, Coogee
- 251 Carrington Road, Coogee
- 165-167 Coogee Bay Road, Coogee
- Address withheld x 4
- Randwick Heritage Action Group x 2 – 4/152 Brook Street, Coogee and address withheld
- 64 Brook Street, Coogee
- Owners Corporation SP 38413 – Units, 6, 7, 11, 12 and 15, 153-161 Coogee Bay Road, Coogee
- 4/138 Beach Street, Coogee
- 4/109 Mount Street, Coogee

Issue	Comment
Too many units in the area which are damaging the heritage and streetscape character of Coogee	The proposed use of the subject site is consistent with the R3 zone objectives which aims to provide for the housing needs of the community within a medium density residential environment and the desired future character of the area.
The existing dwelling-house should be heritage listed	Council's Heritage Officer has assessed the proposal against the relevant provisions in Clause 5.10 of the RLEP and confirmed the existing dwelling-house does not meet the threshold for heritage listing and is therefore not required to be retained on heritage grounds.
Driveway width, sightlines and pedestrian safety	Council's Engineer has confirmed the amended plans and changes to the driveway and basement parking level satisfy the relevant requirements under the RDCP and the Australian Standards.
Bicycle spaces and storage areas are not accessible due to car parking	As above.
Motorbike access	As above.
No affordable housing proposed	The proposal is not required to provide affordable housing.
Solar access and overshadowing	The proposal complies with the ADG and RDCP requirements for solar access and overshadowing to the neighbouring properties.
View loss	As discussed under the Key Issues section, the proposal is considered to uphold the relevant controls under Council's view sharing requirements in accordance with the planning principle and 4 step test in <i>Tenacity Consulting v Warringah Council (2004) NSWLEC 140</i> .
The boundary wall should be reinstated to 165 Coogee Bay Road	The proposal includes new retaining walls to the side boundaries given the excavation required to facilitate basement car parking.
Vibration control and shoring during construction and excavation	Conditions of consent have been imposed that require appropriate mitigation measures for vibration and construction impacts.
Dilapidation report required	This has been imposed as a condition of consent.
Loss of trees and garden impacts on local fauna	Council's Tree Officer has confirmed the proposed removal of vegetation and new planting satisfies Council's requirements in accordance with the RDCP.

Issue	Comment
Not in the public interest	For the reasons discussed in this report, the proposal is considered to be in the public interest.
Traffic and parking	Council's Engineer has confirmed the amended plans satisfy Council's requirements for parking and traffic generation.
Insufficient and inaccurate information (neighbouring windows)	Sufficient information has been submitted with the amended proposal to enable an assessment against the relevant provisions and matters for consideration in Clause 4.15 of the Act.
Rear setback non-compliance	The rear setback non-compliance is limited to the rear balconies and the objectives in the RDCP are upheld for the reasons discussed in the compliance table (Appendix 3).
External wall height	A detailed assessment of the external wall height non-compliance is provided in the Key Issues section. The proposal is considered to satisfy the relevant objectives in that the built form is consistent with the scale of development within the streetscape context, and no significant adverse impacts to neighbouring properties are envisaged as a result of the non-compliance.
Ceiling heights	The 2.7m floor to ceiling heights comply with Council's requirements and the BCA.
Earthworks and excavation	Council's Engineer has confirmed the excavation to accommodate the proposed development is suitable, subject to the recommended conditions of consent.
Deep soil landscaping	The proposal complies with the ADG and RDCP numerical requirements for deep soil landscaping.
GFA non-compliance	The proposal complies with the 0.9:1 FSR development standard in the RLEP.
Privacy	Subject to Condition 2 requiring the privacy screens at the side elevations be fixed, the proposal is not considered to result in any significant adverse acoustic or visual privacy impacts to neighbouring properties.
Bulk, scale and height detracts from heritage items and streetscape	For the reasons discussed in this report, the height, bulk and scale of the amended proposal is considered to satisfy the relevant building envelope objectives and controls. The proposal complies with the key development standards being height and FSR. The proposal is compatible with the R3 zoning of the site and the desired future character. Council's Heritage Officer has confirmed the visual impact of the development on the streetscape character and neighbouring heritage items is suitable and satisfies the provisions in Clause 5.10 of the RLEP.

5.1. Renotification

The first amended plans were renotified in accordance with the Randwick Community Participation Plan and additional submissions were received from:

- 41 Dudley Street, Coogee
- Owners Corporation SP 38413 – Units, 6, 7, 11, 12 and 15, 153-161 Coogee Bay Road, Coogee

Issue	Comment
Privacy screens to the side elevation should be fixed not operable	This forms a condition of consent.
Solar panels should be located on the eastern side of the roof for visual impacts	A condition of consent has been imposed to ensure the height of the solar panels does not exceed the height of the roof parapet.
Trees should be conditioned for protection during construction	Council's Tree Officer has recommended conditions of consent to enable protection of the retained trees.

No anchoring during construction should be conditioned	Council's Engineer has confirmed the proposal is satisfactory in this regard, subject to the recommended conditions of consent.
Dilapidation reports should be carried out	This forms a condition of consent.
Too many units in the area which are damaging the heritage and streetscape character of Coogee	As discussed above, the proposed use of the site is consistent with the medium density zoning and provides for the housing needs of the community. Council's Heritage Officer has confirmed the visual impact to the streetscape and heritage items is satisfactory as per the provisions of Clause 5.10 of the RLEP.

The second amended plans were not renotified to neighbouring properties and previous objectors as the changes did not include any revisions to the built form in accordance with the Randwick Community Participation Plan.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted in accordance with the requirements of the SEPP (Building Sustainability Index: BASIX) 2004. A revised BASIX certificate was submitted on 02/11/2022 to reflect the amended plans.

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

The Vegetation SEPP came into effect in NSW on 25 August 2017. The aims of the Vegetation SEPP are:

(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and

(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

Assessing Officer's Comment: Clause 7(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). Consent for the removal of vegetation within the site is not being sought under this DA.

The proposal retains the significant tree within the front setback and all other removal of limited insignificant vegetation on site has been assessed and supported by Council's Tree Officer (refer to Appendix 1). The proposed landscaping will increase and enhance the quality and amount of vegetation on site and biodiversity values.

6.3. SEPP (Biodiversity and Conservation) 2021

The Biodiversity and Conservation SEPP came into force on 2 March 2022. The new Biodiversity and Conservation SEPP shall replace the SEPP (Vegetation in Non-rural Areas) 2017, with Chapter 2 of the new Biodiversity SEPP applicable to the proposed development. Consideration of the new Biodiversity SEPP has been undertaken in accordance with the provisions of 4.15 of the Act.

The provisions of the Vegetation SEPP have generally been transferred over to the new Biodiversity and Conservation SEPP with particular regards to when a permit from Council is required to remove vegetation and the considerations for Council when granting consent to remove vegetation. As such, it is considered that the proposed development would remain consistent with the provisions of the new Biodiversity and Conservation SEPP, noting the comments and justification above.

6.4. SEPP 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site

poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

6.5. SEPP (Resilience and Hazards) 2021

The application was lodged under the now repealed, SEPP 55 – Remediation of Land and SEPP Coastal Management . Notwithstanding any savings provisions, consideration of the application under the new Resilience and Hazards SEPP is provided below as there are no material policy changes and the new SEPP was made as part of a SEPP consolidation initiative. The Resilience and Hazards SEPP consolidated 3 SEPPs being the Coastal Management SEPP, SEPP 33, and SEPP 55.

Clause 4.6 of the Resilience and Hazards SEPP requires that the consent authority must consider prior to granting consent whether the land is contaminated (previously Clause 7 in SEPP 55). The site is unlikely to be contaminated given the use of the site has been residential. As such, the provisions of Clause 4.6 are satisfied.

The proposal is therefore consistent with the relevant provisions of the Resilience and Hazards SEPP.

6.6. SEPP No. 65 – Design Quality Residential Flat Buildings

The proposed development is for a new RFB that comprises 8 dwellings and is 3 storeys, therefore SEPP 65 applies.

Clause 28 (2) of SEPP 65 states:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

Assessing Officer's Comment:

In accordance with Clause 28 of SEPP 65, the development was referred to Council's Design Excellence Advisory Panel ("DEAP") who assessed the development against the design quality principles of SEPP 65 (refer to Appendix 1). The DEAP advice was considered and amended plans/additional information provided to address the concerns. The amended proposal is considered to have satisfactorily addressed the DEAP comments. As such re-referral to the DEAP was not considered necessary in this instance. Refer to the table below for an assessment against the DEAP responses. The amended development is assessed as being in accordance with the design quality principles of SEPP 65.

DEAP Comment	Response
<p>The proposed design comprises horizontal raised seam metal cladding in varying, narrow, champagne colour bands and metal privacy screening with a natural timber appearance. The base of the building is clad in sandstone also with thin banding.</p> <p>The following changes would improve the relationship with the heritage item next door:</p> <ul style="list-style-type: none"> • a matt finish to the metal cladding, e.g. reflectivity of zinc • reduced emphasis on horizontal lines • remove first-floor cantilever, i.e. support the NE corner of floor from below 	<p>The amended plans replaced the horizontal seam metal cladding at the top floor level within painted finish metal cladding to create a darker/more recessive finish.</p> <p>The splay of the front balconies is considered satisfactory on the basis that visual interest and modulation is provided to the front elevation. Furthermore, the balconies are orientated to reduce bulk away from the neighbouring heritage items and capture easterly views to the ocean.</p>

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<ul style="list-style-type: none"> • front of balconies to be parallel with street front • front of balconies to be articulated or modulated e.g. into two bays to reduce horizontal emphasis 	Each level of the new building contains one unit and as such, dividing the front balcony and main POS area into two bays would reduce amenity to the future residents.
<p>No. 163 is at the point in Coogee Bay Road where zero front setbacks with solid shopfront are transitioning to landscaped setbacks. Built elements in the front setback for the entry should appear as solid stone parts of the landscape and not blade walls, cavernous voids and high boundary retaining walls. The design at street level should incorporate the following:</p> <ul style="list-style-type: none"> • a landscaped roof to the entry passageway with a skylight /natural lighting near the entry lobby, if feasible (potentially via a BCA alternative solution); • more substantial entry structure ie no blade walls; • sandstone formatting at base be similar to existing, not narrow format stone, alternatively brick; • more defined line at which public becomes private, a less leaky entry; • Retention street trees (refer to Landscaping below) 	The amended plans have enclosed the driveway and entry to the carpark thereby concealing the eastern side boundary retaining wall and providing a transition between the solid shopfronts and garages at the front boundary, to the landscaped front setback areas to the west. The pedestrian entry is enclosed adjacent to the front boundary, however, opens up to the sky which provides natural lighting to the lobby area. Refer to Council's Tree Officer's comments in Appendix 1.
The building would benefit from more increased opening sizes on its leeward sides to promote cross-ventilation.	The proposed units receive generous cross ventilation and comply with the ADG requirements.
There is deep soil landscaping concentrated in the front and rear setbacks of the site. The design should include additional planting in the side setbacks to provide sun screening and privacy. Planters with sufficient soil depth for trees and shrubs need to be shown on the landscape drawings.	Due to the narrow width of the site and RDCP requirements for car parking, the basement level adjoins the side boundaries and there is no deep soil landscaping along the side setbacks. This is considered satisfactory on the basis that soft landscaping has been incorporated where possible with sufficient depth (1m) to provide enough soil to grow trees and shrubs for screening.
<ul style="list-style-type: none"> • Pedestrian access to the ground floor is through the stair, which needs to be more spacious. Access by lift only is not acceptable. • Similarly, access to the upper apartments via the staircase would be more encouraged if it were more open and generous. 	On the basis that there is one unit per floor of the building, the reduced size of the common areas for circulation is considered satisfactory. Fire access stairs are directly accessible from the unit corridors.
<ul style="list-style-type: none"> • Bedroom windows are too close to the side boundary, and privacy is poor between neighbours. As ADG separation requirements are not met, habitable room windows should be moved to face north or south, not directly to neighbours. 	The rear bedrooms include windows to the side and rear elevations which provides suitable amenity and natural ventilation. The central bedroom 3 at each level includes a side elevation and northern elevation window which provides suitable amenity, lighting and ventilation to the future occupants. The panel's recommendation to remove windows at the side elevations would not result in a positive planning outcome given natural lighting, ventilation and amenity to the future occupants would be reduced. To address the ADG non-compliance with the 6m separation distance

	requirement, the side elevation privacy screens are conditioned to be fixed and as such, suitably mitigate privacy impacts to the neighbouring properties.
<ul style="list-style-type: none"> Living room balcony screening should be designed with the specific location and size of the adjacent neighbouring windows in mind. 	The location and size of the privacy screening to the front balcony is considered satisfactory and mitigates privacy impacts to the neighbouring properties.
<ul style="list-style-type: none"> There is insufficient information on the proposal's overshadowing of neighbouring living rooms and private open space to assess the impact on amenity there. 	Amended shadow diagrams were submitted that confirm the proposal complies with the ADG and RDCP solar access requirements.
<ul style="list-style-type: none"> The suggestion to extend the two rear ground floor apartment bedrooms to the boundary and to re-orient their windows to the north is supported, as long as there is additional planting in the side setbacks. 	This suggestion has been included on the amended plans.
<ul style="list-style-type: none"> The passage and driveway entry need to be designed to disallow uninvited entry and concealment; A skylight to the passageway and window to the basement parking would increase opportunities for passive surveillance in both directions; The drawings should indicate safe access to the flat roofs and above ground planters; 	The revised design of the passage and driveway prevent unwanted entry, allows natural lighting and passive surveillance. Access to planters for maintenance is facilitated from the ground floor level.
The common stair can be made more inviting to encourage its use and facilitate interaction, by introducing natural light and ventilation.	The common stair has been designed to comply with the fire regulation requirements and as such, is enclosed.
<p>There is generally a high level of finish apparent in the photomontage and materials schedule. The applicant should provide 1:20 cross section and plan details of the facade, balustrades, privacy screens, eaves and entry areas to illustrate how the appearance will be achieved.</p> <p>The 1:100 drawings should depict the fire booster assembly, the waste chute, bin store, rainwater pipes, balcony overflows, stormwater grates, gate, letter box, street number and Intercom.</p> <p>In addition, and reiterated from above,:</p> <ul style="list-style-type: none"> The detailing at the top level eaves overhang needs to be more substantial. Avoid blade walls protruding in the front setback Provide a sample of the cladding material (with low reflectivity) Avoid narrow format stone banding or use brick 	Sufficient information has been submitted to enable an assessment of the proposed materials and finishes. A condition requiring the finishes schedule to be submitted and approved by the Manager of Development Control has been recommended.

An assessment has also been carried out against the design criteria of the Apartment Design Guide ("ADG") (refer to the table below). In summary, the development complies with the objectives of the ADG.

Clause 30 of SEPP 65 provides standards that cannot be used as grounds to refuse development consent, which include:

- (1) *If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:*

- (a) *if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*

Assessing officer's comment: According to Council's Development Engineer, the proposal provides the required number of parking spaces (refer to Appendix 1).

- (b) *if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*

Assessing officer's comment: All of the apartments have internal areas that comply with the ADG (refer to Appendix 3).

- (c) *if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Assessing officer's comment: All units will be provided with 2.7m floor to ceiling heights and 3.1m floor to floor heights which complies with the requirements of the ADG.

- (2) *Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:*

- (a) *the design quality principles, and*
(b) *the objectives specified in the Apartment Design Guide for the relevant design criteria.*

Assessing officer's comment: Based on comments provided by Council's DEP, adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria (refer to Appendix 1), and the Applicant has submitted a Design Verification Statement prepared by a qualified architect.

- (3) *To remove doubt:*

- (a) *subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
(b) *the design criteria specified in subclause (1) are standards to which section 79C (2) of the Act applies.*

Apartment Design Guide (ADG)

An assessment has been carried out in accordance with Part 3: Siting the Development and Part 4: Designing the Building of the Apartment Design Guide against the design criteria requirements. Any non-compliance to the design criteria includes a merit-based assessment as per the design guidance of the Apartment Design Guide and is further discussed in the Key Issues section.

Apartment Design Guide – Compliance Table		
Design Criteria	Proposal	Compliance
<u>Communal and Public Open Space</u> Communal open space has a minimum area equal to 25% of the site (161m ²). Developments achieve a minimum of 50% direct sunlight to the principal usable part of	No communal open space is provided for the development.	No Refer to Key Issues for further discussion.

Apartment Design Guide – Compliance Table								
Design Criteria	Proposal	Compliance						
the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).								
<p><u>Deep Soil Zones</u> Deep soil zones are to meet the following minimum requirements:</p> <table> <tr> <th>Site Area</th><th>Minimum Dimension</th><th>Deep Soil Zone (% of site area)</th></tr> <tr> <td>Less than 650m²</td><td>-</td><td>7% (45.1m²)</td></tr> </table>	Site Area	Minimum Dimension	Deep Soil Zone (% of site area)	Less than 650m ²	-	7% (45.1m ²)	142.4m ² (25%) deep soil provided.	Complies
Site Area	Minimum Dimension	Deep Soil Zone (% of site area)						
Less than 650m ²	-	7% (45.1m ²)						
<p><u>Visual Privacy</u> Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> </table>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	The side elevation windows that face the side boundaries are treated with privacy screening to minimise overlooking to the neighbouring properties. The upper-level balcony and windows do not include privacy screens, however, comply with the separation distances to the heritage listed semi-detached dwelling to the east.	Satisfactory, subject to condition
Building Height	Habitable Rooms and Balconies	Non-habitable rooms						
Up to 12m (4 storeys)	6m	3m						
<p><u>Solar Access and Daylight</u> Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	Due to the orientation of the site, all units receive compliant solar access to living rooms and POS.	Complies						
<p><u>Natural Ventilation</u> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p> <p><u>Cross-over apartment</u> <i>cross ventilating apartment with two opposite aspects and with a change in level between one side of the building and the other</i></p>	All apartments (100%) are naturally cross ventilated.	Complies						

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Apartment Design Guide – Compliance Table		
Design Criteria	Proposal	Compliance
<i>Cross-through apartment</i> <i>cross ventilating apartment on one level with two opposite aspects</i>		
<u>Ceiling Height</u> Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable rooms – 2.4m 	All units are provided with minimum 2.7m ceiling heights, noting floor to floor heights of 3.1m.	Complies
<u>Apartment Layout</u> Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> Studio - 35m² 1 Bedroom - 50m² 2 Bedroom - 70m² 3 Bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>All units are 3 bedrooms and are 127.5sqm which complies with the 100sqm requirement (3 bathrooms).</p> <p>All habitable rooms have windows that comply with the requirements of the ADG.</p> <p>All bedrooms and living rooms comply with minimum dimensions.</p>	Complies
<u>Environmental Performance</u> Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<p>Depth of habitable rooms (other than open plan rooms) do not exceed 2.5 x the ceiling height.</p> <p>Open plan rooms combining living, dining and kitchen have a maximum living room depth less than 8m from a window.</p>	Complies
<u>Open Space</u> All apartments are required to have primary balconies as follows:	The ground floor level unit includes a 31sqm front terrace and a smaller terrace of 7sqm at the western side	Complies

Apartment Design Guide – Compliance Table		
Design Criteria	Proposal	Compliance
<ul style="list-style-type: none"> • Studio - 4m² • 1 bedroom - 8m² (minimum depth of 2m) • 2 bedroom – 10m² (minimum depth of 2m) • 3+ bedroom apartments – 12m² (minimum depth of 2.4m) <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	<p>elevation.</p> <p>The level 1 unit at the rear provides outdoor space at the rear of 82sqm and a 24sqm front balcony.</p> <p>The units at levels 2 and 3 include 25sqm front balconies and 15sqm rear balconies.</p> <p>All private open spaces comply with the minimum depth requirements.</p>	
<p><u>Common Circulation Space</u></p> <p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>A maximum of one unit is proposed on any single level.</p>	Complies
<p><u>Storage</u></p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> • Studio - 4m³ • 1 Bedroom - 6m³ • 2 Bedroom - 8m³ • 3 Bedroom - 10m³ <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>Compliant storage is provided for each unit within the units.</p>	Complies

6.7. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community and encourage housing affordability, will not be inconsistent with the streetscape or the desired future character of the area (noting the area is considered to be under transition), and will not result in any unreasonable amenity impacts upon surrounding residents, subject to the recommendations within the report.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.9:1 (510.03m ²)	0.9:1 (510m ²)	Yes
CI 4.3: Building height (max)	12m	12.38m (roof parapet)	No

6.7.1. Clause 5.10 - Heritage conservation

Council's Heritage Officer has assessed the application against the provisions of Clause 5.10 of the RLEP given the neighbouring heritage items to the east. Refer to Appendix 1 for detailed comments.

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6.7.2. Clause 6.1 – Acid sulfate soils

Clause 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject site is within a Class 5 area and 235m from a Class 4 area as specified on the Acid Sulfate Soils Map.

The relevant provisions of Clause 6.1 of state:

1. *The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.*
2. *Development consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.*

Class of land Works

- | | |
|---|--|
| 4 | <i>Works more than 2 metres below the natural ground surface.
Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.</i> |
| 5 | <i>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</i> |
3. *Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*

The subject works are not likely to lower the water table by 2.0m below the natural ground surface on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, it is unlikely to be any acid sulfate affectation and the proposal is therefore acceptable with regard to Part 6.1 of the RLEP.

7. Clause 4.6 Exception to a Development Standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	12m	12.38m (roof parapet)	0.38m	3.2%

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

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

4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

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

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

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

standard and the objectives for development of the zone in which the development is proposed to be carried out.

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

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

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

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

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

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

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

7.1. Exception to the Building Height development standard (Clause 4.3)

The applicant's written justification for the departure from the height standard is contained in Appendix 3.

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 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 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:

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Both of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a) The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b) The zone objectives (Clause 2.3);
- c) The land use table (at the end of Part 2); and
- d) The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 12m; and
 - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.9:1.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the desired future character. The permissible uses under the LEP are as follows:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture

The R3 Medium Density Residential zoning envisages residential flat buildings which is proposed on the site. The 12m height limit clearly envisages a built form of up to four storeys. The building will present as four storeys to Coogee Bay Road, consistent with what is desired in the LEP. As the majority of the proposed built form complies with the building height, the extent of variation located at the north eastern corner will not be readily discernible from the street as it is integrated into the mostly compliant roof.

The site is surrounded by a number of residential flat buildings, many of which are between three and four storeys in height. When viewed in the context of Coogee Bay Road, the proposed residential flat building will appear as four storeys. It will be a compatible addition to the streetscape which will establish a building height consistent with surrounding properties (see **Figure 3**). The proposed area of non-compliance at the north eastern corner will not alter this compatibility.



Source: Apple Maps

Figure 3: Aerial View of Coogee Bay Road,
Demonstrating the Pattern of Existing Development

The proposed built form is also consistent with approvals in the vicinity, which assist in articulating the desired future character. There are a number of examples of R3 zoned medium density developments in the LGA which have been approved under the current controls with building height non-compliances. It is recognised that each application is assessed on its own merits and each site has different characteristics. However, in accordance with *SJD*, it is a relevant consideration to understand if Council has accepted breaches to the height standard in the past, under what circumstances these were supported and if indeed there are any comparable principles to the subject development application (DA). Based on Council's Clause 4.6 Register, these include the following:

DA No.	Address	Height Variation
DA 43/2016	106 Brook Street Coogee	33%
DA 801/2015	54-56 Marine Parade Maroubra	10%
DA 35/2018	137 Carrington Road Coogee	25%
DA 502/2017	149-151 Malabar Road South Coogee	52.2%
DA 04/2021	76 Bream Street Coogee	20.4%
DA 161/2022	56 Bream Street Coogee	23%

The environmental grounds that Council accepted for breaching the standard included compatibility with the surrounding development in terms of scale, built form and context; and no unreasonable impacts on the amenity of adjoining properties or locality.

As the proposed height is consistent with the desired medium density residential character under the LEP and with other approved developments in the vicinity, it can be considered consistent with the desired future character in accordance with Objective (a).

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

The subject site is neither a heritage nor a contributory item and is not located within a heritage conservation area. However, it adjoins two semi-detached dwellings at Nos. 165 and 167 Coogee Bay Road, which are identified as heritage items under the LEP.

The surrounding neighbourhood, including the subject site, is zoned R3 Medium Density Residential. The R3 zone is characterised by predominantly residential flat buildings of varying heights, ages, and architectural styles, and interspersed with some single and two storey dwellings. Given the context of the surrounding development, the proposal is unlikely to affect the scale and character of Nos. 165 and 167 Coogee Bay Road. This is also reflected in the Heritage Impact Statement submitted with the DA, which included the following comments:

- The scale of development in the streetscape is mixed and incorporates single dwellings as well as low density apartment development. The subject proposal replaces a single dwelling and responds to the scale of proximate contemporary apartment development, including adjacent development to the west. The proposal softens development in the context of the heritage item through the generous front setback and provision of soft landscaping, the 2m setback to the east and the overall articulated form of the development with setback upper floor and provision of balconies and large glazed areas providing breaks in the elevations.
- The proposal is a sympathetic response to the adjacent heritage item in both form and materiality, ensuring that the new building will not visually dominate the heritage item.
- The proposal maintains views to the heritage item in the street, views from the heritage item and views to Coogee Beach, owing to the setback and sympathetic form and materiality.

The proposed four storey building will have its top level set back to minimise visual impacts from the street and adjoining development. Accordingly, the proposal is compatible with the scale and character of the nearby heritage item in accordance with Objective (b).

(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.

In our opinion, given the restricted location of the height non-compliance, the proposal will not result in unreasonable impacts on adjoining or nearby properties in respect of visual bulk, privacy, overshadowing and views, as outlined below.

Visual Bulk

As indicated, while the extent of height non-compliance occurs at the front of the building, it is restricted to the roof structure, and will not be readily distinguishable or substantially contribute to the visual bulk. This is because of the minor variation (0.38m) which will be integrated into the roof form of the top floor, with the remaining roof area complying with the height standard. In addition, as the top floor and roof is set back from the leading edge of the floors below, the variation (and indeed the entire roof) is read as a recessive element within the context of the existing and emerging streetscape character. In our opinion, the proposal represents a better planning outcome, compared to the option of cutting out the corner of the top floor to achieve full compliance, which will create an inconsistent design.

Privacy

Privacy will also be maintained for adjoining development. The extent of height variation occurs within the roof structure and not within wall areas that contain windows, and will therefore not create overlooking opportunities.

Views

An assessment of the view impacts under the principles of *Tenacity v Warringah Council* [2004] NSWLEC 140 indicates that there are some partial north eastern oblique views of the Pacific Ocean which are available from the upper level of development on the western side of the subject site at No. 161 Coogee Bay Road. These views are available from a standing position in the living room and across a side boundary.

In our opinion, the additional 0.38m in building height will not likely impact on views from the adjoining property. The photographic comparison in **Figure 4** below indicates that the area of non-compliance within the roof is located away from the main water view would therefore not unreasonably affect views compared to the existing situation. The roof is also set back from the main building line of the floors below which is a more skilful design, and strict compliance with the building height standard would not materially improve water views. Accordingly, the proposal is considered to be consistent with the planning principles set out in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.



Figure 4: View Impact of the Proposed Roof from Top Floor of No. 161 Coogee Bay Road

Overshadowing

As indicated, the extent of height variation is minor and restricted to the northern portion of the proposed roof. An assessment of the proposal in respect of solar access was undertaken in the SEE submitted separately. It indicated that No. 165 Coogee Bay Road to the east would receive more than three hours solar access during the winter solstice, including parts of the main living areas and private open space. The property to the south at No. 5 Kidman Street was also shown to experience very little overshadowing as a result of the proposal and would continue to receive three hours of solar access in mid-winter.

In our opinion, the area of non-compliance is not likely to result in significant impacts in terms of visual bulk, privacy, views and overshadowing and satisfies the intent of objective (c).

Assessing officer's comment: The justification provided by the applicant above is generally concurred with and the following additional comments are made:

- The proposed height non-compliance in relation to the roof parapet does not result in a development that is incompatible with the desired future character of the area.
- The breach of the height standard is considered justifiable on the basis that the non-compliance is minor (0.38m) and relates to the front portion of the roof parapet only.
- The roof ridge and parapet height of the building provides a transitional height between the neighbouring properties at 165 Coogee Bay Road and 153-161 Coogee Bay Road. As such, the proposal is consistent with the neighbouring properties.

- The proposal presents as three storeys with a reduced top storey to Coogee Bay Road which is also consistent with the existing three to four storey residential flat buildings within the immediate vicinity of the site.
- The roof height would not adversely impact the desired character and has a satisfactory streetscape presentation.
- No significant adverse amenity or visual impacts to the neighbouring properties or the streetscape would likely occur. It is noted that compliance with the height standard would not improve the view impacts to the neighbouring property at 153-161 Coogee Bay Road.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the 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 height development standard as follows:

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. There are sufficient environmental planning grounds to justify the FSR non-compliance. These include minor extent of variation, topography/site constraints, consistency in the context, the presentation to Coogee Bay Road and surrounding areas, maintaining environmental amenity, good design and amenity, and promoting economic and orderly development. These will now be discussed.

Extent of Variation

The extent of height non-compliance is 0.38m which equates to a 3.1% variation. In our opinion, this variation is minor and will not create adverse visual or amenity impacts, as discussed elsewhere in this document.

Topography

The site has a sloping topography from south to north. While the majority of the proposal complies with the height limit, the variation is due to an anomalous drop in the existing ground level at the front of the existing dwelling. This is isolated towards the northern portion of the site only.

Consistency in the Context

This report demonstrates the proposed building will remain compatible with nearby developments. The additional building height is restricted to the northern end of the roof of the top floor, and is integrated into an otherwise fully height compliant roof form. It will therefore not be easily discernible from the street or impact the existing characteristics of the precinct. Consistency in the context is recognised as an environmental planning ground in *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097 where Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

In our opinion, the proposal also maintains the desired future character of the locality by providing a new residential flat building in an area that is characterised predominantly by medium density development (see **Figure 3** above).

Presentation to Coogee Bay Road and Surrounding Areas

The extent of height variation will not be readily discernible from Coogee Bay Road, given it is set back from the leading edge and integrated into a mostly compliant roof form. The proposal will maintain generally compliant four storey presentation to Coogee Bay Road and surrounding areas, which is envisaged by Council. The top floor and roof will be stepped back to reflect the sloped topography, and will provide an appropriate transition between the elevated residential flat building to the west at No. 161 Coogee Bay Road and the dwelling house at No. 165 Coogee Bay Road (see **Figure 5**).



Source: PBD Architects

Figure 6: Street Elevation, Demonstrating the Transition of Built Form

Maintain Environmental Amenity

Our assessment under Test 1 above has demonstrated that, notwithstanding the height variation, the proposal will reasonably maintain neighbours' privacy, solar access, and views. While the height variation is the result of an anomalous existing lowered ground line at the north eastern corner, it is integrated into the roof structure that predominantly complies with the height limit, ensuring the proposal relates well to surrounding developments.

Good Design and Amenity

The proposal provides a visual benefit through the provision of a high quality residential flat building. Strict compliance with the development standard would result in the northeastern corner of the top floor unit being "notched in" or removed. This would not only create complications with waterproofing and constructability; it would also appear visually incongruous and result in a poor design outcome, with no material benefit. The proposed design is considered a well-designed outcome, with no adverse impact to the amenity of adjoining properties as a result of the height variation. The proposed building envelope is a preferred design solution.

The integrated area of variation will enhance the site's street presentation, positively contribute to the locality's emerging character, and provide an appropriate interface with the public domain and adjoining buildings. The proposed materials have been selected to complement the character of other development in the locality. The new landscaping throughout will further soften the built form and improve streetscape appearance.

The proposal will provide additional accommodation on the site with high levels of internal and external amenity, including lift access and private open space, whilst maintaining a similar scale to the existing and emerging medium density development in the locality. Accordingly, the proposal, including the height variation, promotes good design and amenity in accordance with Object 1.3(g) of the EPA Act.

Orderly and Economic Use of Land

The site is currently an anomaly in that it is one of only a few single dwelling houses on the southern side of Coogee Bay Road that is dominated by and zoned for multi storey medium density development. The proposal will provide a residential flat building on the site which will provide additional accommodation within R3 zoned land, as envisaged by Council, promoting the orderly and economic development of the land in accordance with the objects of the EPA Act.

Accordingly, in our opinion, the height variation would be consistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

Assessing officer's comment: The responses regarding how the height non-compliance at the roof parapet of the building satisfied the objectives of Clause 4.3 in the written request above. This is considered to have adequately demonstrated sufficient environmental planning grounds, with regard to the relevant objectives of the Act, to justify contravention of the development standard of the roof.

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 height standard and R3 Medium Density Residential zone is provided below:

Assessment against objectives of height standard

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

Assessment against objectives of the R3 Medium Density Residential zone

The objectives of R3 zone are:

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

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

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

Response: The existing single dwelling will be replaced by a residential flat building comprising four high quality units within the medium density residential environment.

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

Response: The proposal provides three bedroom units, contributing to the variety of housing types in the medium density residential zone.

Objective: *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.*

Response: The new building presents as four storeys to Coogee Bay Road, with the top floor set back from the leading edge. The proposal will present a well-designed contemporary development which will be consistent with the existing and emerging bulk and scale of multi storey residential flat buildings.

Objective: *To protect the amenity of residents.*

Response: The proposed area of non-compliance has been assessed to have no discernible impact to neighbouring properties and will benefit the future occupants of the site.

Objective: *To encourage housing affordability.*

Response: The proposal replaces a single dwelling with four smaller dwellings that will facilitate housing affordability.

Assessing officer's comment: The reasons outlined by the applicant above are concurred with and it is considered that the proposal meets the objectives of the R3 Medium Density zone. The proposed development will provide for the housing needs of the current and future occupants and contributes to the desired future character.

The development is consistent with the objectives of the height standard and the R3 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 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 height development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The 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

View Sharing

The RDCP requires view sharing to be considered where there is a potential for view loss impact to ensure the equitable distribution of views between developments, neighbouring properties and the public domain.

The objectives for view sharing within RDCP are as follows:

- *To acknowledge the value of views to significant scenic elements, such as ocean, bays, coastlines, watercourses, bushland*
- *and parks; as well as recognised icons, such as city skylines, landmark buildings /structures and special natural features.*
- *To protect and enhance views from the public domain, including streets, parks and reserves.*
- *To ensure developments are sensitively and skillfully designed to maintain a reasonable amount of views from the development, neighbouring dwellings and the public domain.*

The following properties have objected to the proposal based on view impacts.

- 6/153-161 Coogee Bay Road
- 7/153-161 Coogee Bay Road
- 11/153-161 Coogee Bay Road
- 12/153-161 Coogee Bay Road
- 15/153-161 Coogee Bay Road

In assessing the reasonableness or otherwise of the degree of view loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four-step assessment of view sharing. The steps are as follows:

1. The assessment of the views affected

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

6/153-161 Coogee Bay Road

- Interrupted ocean views of the horizon.

7/153-161 Coogee Bay Road

- Interrupted ocean views of the horizon.
- Interrupted district views to Coogee.

11/153-161 Coogee Bay Road

- Interrupted ocean views of the horizon.
- Uninterrupted district views to Coogee and Randwick.

12/153-161 Coogee Bay Road

- Interrupted ocean views of the horizon.

15/153-161 Coogee Bay Road

- Partially interrupted ocean views of the horizon.
- Uninterrupted district views to Coogee and Randwick.

2. From what part of the property are views obtained?

The Court said: "*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*"

6/153-161 Coogee Bay Road

- All views across the eastern side boundary have been considered from a standing position.
- The subject property is a unit on level 2.
- The interrupted (from built form and vegetation) ocean views of the horizon are obtained from the bedroom across the eastern side boundary.

7/153-161 Coogee Bay Road

- All views across the eastern side boundary have been considered from a standing position.
- The subject property is a unit on level 2.
- The interrupted (from built form and vegetation) ocean views of the horizon are obtained from the balcony and lounge area across the eastern side boundary.
- A glimpse of the ocean and horizon view is obtained from bedroom 2, however, this is significantly interrupted by built form and vegetation.

11/153-161 Coogee Bay Road

- All views across the eastern side boundary have been considered from a standing position.
- The subject property is a unit on level 3.
- Interrupted (by vegetation and built form) ocean views of the horizon are obtained from the front balcony across the eastern side boundary.

12/153-161 Coogee Bay Road

- It is noted that access to the subject property could not be obtained and the photographs from the subject unit have been obtained from the objector in Figure 4 below.
- All views across the eastern side boundary have been considered from a standing position.
- The subject property is a unit on level 3.
- Interrupted (by built form) ocean views of the horizon are obtained from the front balcony and living area (Figure 4) across the eastern side boundary.



Figure 4 – Objectors photo from the lounge area at Unit 12

15/153-161 Coogee Bay Road

- All views across the eastern side boundary have been considered from a standing position.
- The subject property is a unit on level 4.
- Partially interrupted (from built form) views of the ocean, horizon and district views are obtained from the bedroom, front balcony, side terrace, kitchen and lounge area across the eastern side boundary.

3. What is the extent of the impact?

The Court said: "The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

6/153-161 Coogee Bay Road

- The proposal would result in loss of the interrupted ocean horizon views from the bedroom across the eastern side boundary.
- The extent of the impact upon existing views has been demonstrated in Figure 5 below. The photomontages have been prepared by the Applicant.
- Overall, it is therefore considered that the proposal will have a minor impact on views obtained from this property.

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VP01 Existing photo



VP01: Photomontage of new proposal

Figure 5 – Existing view and photomontage of the proposal as viewed from Unit 6

7/153-161 Coogee Bay Road

- The proposal would result in loss of the interrupted ocean horizon views from the balcony and lounge area (Figure 6) across the eastern side boundary. This includes the glimpse of the ocean horizon obtained from the bedroom.
- The extent of the impact upon existing views has been demonstrated in Figure 6 below.
- The photomontages have been prepared by the Applicant. It is noted that the red shaded area represents the wall height non-compliance associated with the first amended plans. The second amended plans increased the extent of the wall height non-compliance due to the revised existing ground level on the architectural plans. Notwithstanding this, it is

considered that compliance with the wall height control would not significantly improve the view impact from the neighbouring properties.

- Overall, it is therefore considered that the proposal will have a minor-moderate impact on views obtained from this property.



VP02: Existing photo



VP02: Photomontage of new proposal with volume over the 10.5m Wall Height Plane in red

Figure 6 – Existing view and proposed photomontage at Unit 7

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11/153-161 Coogee Bay Road

- The proposal maintains the substantially interrupted ocean glimpse obtained from the front balcony across the eastern side boundary.
- The extent of the impact upon existing views has been demonstrated in Figure 7 below.
- The photomontages have been prepared by the Applicant.
- Overall, it is therefore considered that the proposal will have a negligible impact on views obtained from this property.

**VP03: Photomontage of new proposal**

Figure 7 – Photomontage of proposal from Unit 11

12/153-161 Coogee Bay Road

- The proposal would result in loss of the interrupted (by neighbouring built form) ocean horizon views from the balcony and lounge area (Figure 8) across the eastern side boundary.
- The subject unit is situated in the middle of the neighbouring site and setback approximately 31.3m from the front boundary.
- The extent of the impact upon existing views has been demonstrated in Figure 8 below.
- Overall, it is therefore considered that the proposal will have a moderate impact on views obtained from this property.



Figure 8 – Objectors photo from the lounge area at Unit 12

15/153-161 Coogee Bay Road

- The proposal would result in a partial loss of the ocean and horizon views from the edge of the side terrace and kitchen window across the eastern side boundary.
- The proposal generally maintains ocean views from the dining/living room window (Figure 9) and the front balcony.
- The extent of the impact upon existing views has been demonstrated in Figures 9-11 below.
- The photomontages have been prepared by the Applicant. It is noted that the red shaded area represents the wall height non-compliance associated with the first amended plans. The wall height non-compliance would obstruct the partial horizon views to the ocean when standing at the eastern edge of the roof terrace. This view is heavily interrupted by neighbouring built form and vegetation as shown to the right hand-side of the blue building with the terracotta roof tiles. As such, this portion of the view impact is considered negligible and compliance with the wall height control would not improve the view impacts associated with this property.
- Overall, it is therefore considered that the proposal will have a minor-moderate impact on views obtained from this property.



VP05: Existing photo

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VP05: Photomontage of new proposal with volume over the 10.5m Wall Height Plane in red

Figure 9 – Existing view and photomontage from the edge of the side terrace at Unit 15



VP04: Existing photo

Figure 10 – Existing view of side terrace at Unit 15



VP04: Photomontage of new proposal with volume over the 10.5m Wall Height Plane in red

Figure 11 – Existing view and photomontage from dining/living area window at Unit 15

4. What is the reasonableness of the proposal that is causing the impact?

The Court said: "The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

The Court poses two questions in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140* (paragraphs 23-33). The first question relates to whether a non-compliance with one or more planning controls results in view loss. The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views.

The following comments are made with regard to the reasonableness of the proposal:

- The proposal will have a minor impact on views obtained from 6/153-161 Coogee Bay Road, a minor-moderate impact on views obtained from 7/153-161 Coogee Bay Road, a negligible impact on views obtained from 11/153-161 Coogee Bay Road, a moderate impact on views obtained from 12/153-161 Coogee Bay Road and a minor/moderate on views obtained from 15/153-161 Coogee Bay Road.

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- The proposal presents as three storeys, with a reduced fourth storey above basement parking with a flat roof form. The proposed building envelope is considered to result in an appropriate streetscape outcome to Coogee Bay Road which is consistent with the number of storeys to adjacent properties including the neighbouring residential flat building at 153-161 Coogee Bay Road (4-5 storeys), the shop top housing development at 173-177 Coogee Bay Road (5 storeys), the educational establishment at 168 Coogee Bay Road (St Bridgit's Primary School - 4 storeys), the mixed use development at 183 Coogee Bay Road (Adina Apartments - 5-6 storeys) and the neighbouring heritage items. As shown in Figure 12 below, the parapet height is lower than existing roof ridge height at 153 Coogee Bay Road.



Figure 12 – Northern street elevation of the proposed development

- The subject site contains a two-storey dwelling-house and is considered to be significantly underdeveloped within the R3 medium density residential zone. On the basis that the neighbouring property currently obtains eastern views across the subject site, it is considered that any new development at the site would result in unavoidable view impacts to the ocean and horizon.
- The development attains a maximum height of 12.38m to the roof parapet at the front of the building. As discussed in Section 7, the proposed non-compliance is considered satisfactory on the basis that compliance with the height standard would not improve the view impacts to the neighbouring property.
- The floor to ceiling heights of 2.7m are not considered to be excessive. The amended proposal lowered the overall building by 800mm and relocated the mechanical services to the basement level thereby minimising bulk and view impacts to the neighbouring properties. Condition 2 requires the height of the solar panels not exceed the height of the roof parapet.
- The bulk and scale of the proposal is considered to be reasonable (the proposed floor space ratio complies with the 0.9:1 development standard). The proposed development will be largely contained within the permissible building envelope except for a non-compliance with the height control at the front parapet, the wall height control and the ground floor level side setbacks that provide solar access to the rear bedrooms. The extent of the wall height non-

compliance is highlighted red in the figures above. The impact of the wall height reduces ocean horizon views when standing at the edge of the side terrace at Unit 15, however, expansive views are maintained from the surrounding areas of the terrace, including the internal areas of the unit which are not impacted from the wall height non-compliance. It is therefore concluded that a compliant design with regards to the wall height would not substantially improve the view impacts to the neighbouring properties.

- The neighbouring properties at 153-161 Coogee Bay Road adjoins the western boundary of the subject site and views to the ocean and horizon are obtained across the eastern side boundary. It has been established that *“the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries”*. It is therefore considered that the proposal represents a skillful design that minimises the impacts of the development to the neighbouring properties.

In conclusion, the proposal satisfies the aims and objectives for view sharing in the RDCP and the planning principle tests established by *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

External Wall Height

Council's wall height control in Part 4.4 of the RDCP requires a 10.5m maximum height for the external enclosing walls of a building. The 10.5m wall height control and the 12m building height control together ensure that development provides for a suitable number of storeys and encourages interesting roof forms suitable to the streetscape. The control has been devised to ensure that adequate floor to ceiling height promotes light and quality interior spaces, realistic floor slab and roof construction, and basement or semi-basement car parking could be achieved under different topographical conditions. In addition, the external wall height aims to achieve a suitable design outcome that controls the bulk and scale of development to minimise the impacts on neighbouring properties in terms of overshadowing, privacy, views and visual amenity. An assessment of these objectives is provided below.

The site slopes approximately 6.21m from the southern rear boundary to the northern front boundary. As such, the wall height variation increases towards to the front of the building and the rear portion of the building complies. Due to the cross fall at the site, the eastern side elevation presents a great variation to the wall height control compared to the western side.

At the highest point of the roof parapet, the proposed wall height is 12.38m to the roof parapet at the front of the building at the corner of the eastern elevation, and 11.8m to the lift overrun (1.3m-1.88m non-compliance). At the western side elevation, the proposal also includes solar panels which are 0.36m above the roof parapet and attain a wall height of 11.48m. The architectural plans include 3D wall height planes as shown in Figure 13 below.

The first amended plans reduced the bulk and scale of the upper level by lowering the overall building by 800mm, removing the northern roof overhang to the front balcony, increasing the eastern side setbacks to the front (kitchen) and rear (bedroom 2 and bathroom) of the unit, introducing a curved roof form to the fire stair and combining the rear bedroom terraces to a singular terrace.

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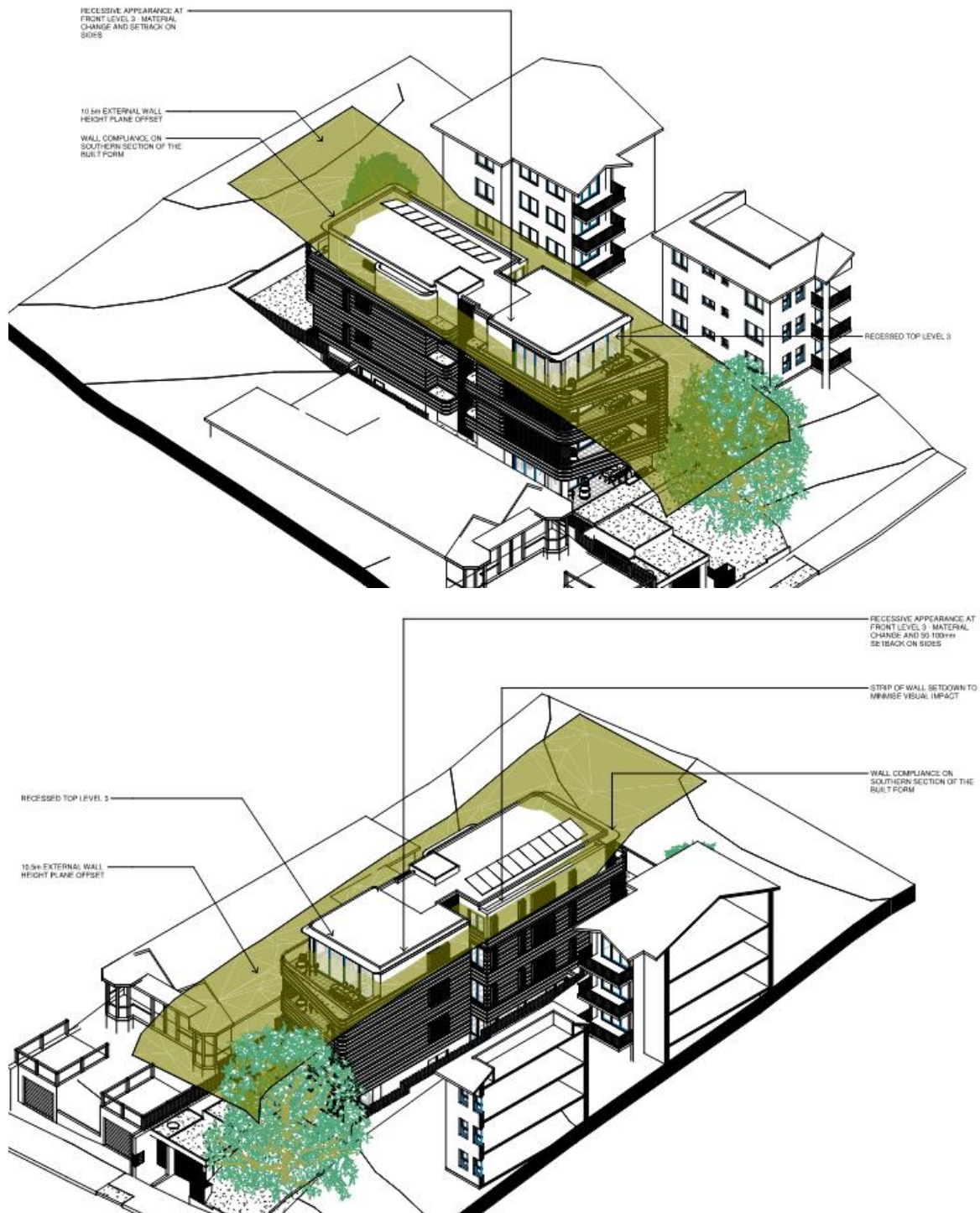


Figure 13 – 3D Wall Height Plane

The existing character within the immediate vicinity is an eclectic mix of large developments such as the adjoining 4-5 storey residential flat building immediately to the west at 153-161 Coogee Bay Road, the 5 storey shop top housing development at 173-177 Coogee Bay Road, the 4 storey educational establishment (St Bridgit's Primary School) at 168 Coogee Bay Road, and the 5 storey mixed use development at 183 Coogee Bay Road (Adina Apartments). The adjoining semi-detached dwellings to the east are heritage items at 165 and 167 Coogee Bay Road which are two storeys above garages that face the street. To the east of the heritage items, there are 2 storey semi-detached dwellings at 169 and 171 Coogee Bay Road which are a similar size to the adjoining heritage items.

The existing site is considered underdeveloped according to the current building envelope controls (being 2 storeys) and the R3 zoning of the site. The proposed development presents as 3 storeys with a reduced upper level above basement parking. The overall number of storeys is 4 and within the context of the subject site, this is consistent with the established scale of development along Coogee Bay Road. The number of storeys is considered transitional between the heritage items (165, 167, 169 and 171 Coogee Bay Road), the 5 storey shop top housing development to the east (173-177 Coogee Bay Road) and the 4-5 storey residential flat building the west (153-161 Coogee Bay Road). Council's Heritage Officer has confirmed the amended plans result in a suitable scale of development adjacent to the heritage items.

The upper level has been recessed, includes a flat roof form and would not appear unduly prominent when viewed from the streetscape of the neighbouring properties. The floor to ceiling heights at each level of the building are 2.7m which meets the minimum dimension specified by Council's controls for realistic floor slab and roof construction, are not considered excessive or contribute to the wall height non-compliance. The floor to ceiling heights provide suitable amenity to the future residents in terms of natural lighting and high quality interior spaces. The upper level is adequately recessive, provides modulation to the side elevations and includes a painted finish which contrasts with the horizontal seam metal cladding at the levels below.

In response to the amenity impacts upon neighbouring properties, the proposal complies with Council's numerical requirements for overshadowing and solar access. The proposal is not considered to result in any significant adverse privacy impacts subject to Condition 2 which requires the side elevation privacy screening to be fixed which prevents overlooking. As discussed in the view loss assessment above and demonstrated by the photomontages prepared by the Applicant, the wall height non-compliance does not contribute to any substantial view loss and compliance would not improve the view impacts from the neighbouring properties at 153 Coogee Bay Road. A full assessment against the RDCP amenity controls is provided in the ADG assessment and RDCP compliance table in Appendix 3. For these reasons the proposal, as conditioned, upholds the objectives of the height control and the wall height variation is supported.

Communal Open Space

Objective 3D-1 of the ADG requires a minimum area for communal open space equal to 25% of the site area, with the communal area to receive a minimum of 2 hours of sunlight in midwinter. However, the objective acknowledges that some developments may not be able to achieve the design criteria and the provision of COS, with particular regards to small lots. The subject site is considered to be a smaller sized allotment, having a site area of 567m². Part 3D-1 of the ADG recommends that where developments are unable to achieve the design criteria, the following should be considered:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space*

A roof terrace would require additional roof top structures to access the area adversely attributing to the bulk and scale of the development, and would likely result in adverse amenity impacts upon surrounding properties with regards to view impacts, visual and acoustic privacy given the proximity of the proposed development to the neighbouring properties. As such, in this instance it is considered that a roof terrace would not be an appropriate solution.

To compensate for the lack of COS, the proposed development provides private open space areas in excess of the minimum requirements under the ADG, with the following areas provided:

- Three bedroom apartments – 12m² required.
- The ground floor level unit includes a 31sqm front terrace and a smaller terrace of 7sqm at the western side elevation.
- The level 1 unit at the rear provides outdoor space at the rear of 82sqm and a 24sqm front balcony.
- The units at levels 2 and 3 include 25sqm front balconies and 15sqm rear balconies.

The subject site is 350m from Coogee Beach including the adjoining public recreational areas including the Coogee Oval and Playground.

Objective 3D-1 seeks to enhance residential amenity for occupants and provide opportunities for landscaping.

Subclause 2.3.2 of Part C2 of RDCP also requires communal open space to be provided for residential flat buildings, however no minimum numerical area is provided. The objective of clause 2.3 aims to ensure that useful areas of private and communal space for outdoor living and recreation to serve the needs of residents is provided to enhance their quality of life.

The areas of POS at the ground floor level are well integrated with landscaping to improve the visual outlook and amenity of the areas. In view of the size of the site, increased POS and the proximity of Coogee Beach and public recreational areas, it is considered that in this instance despite the lack of COS, the proposal can achieve the objectives of the ADG and subclause 2.3.2 and therefore is supported in this instance.

10. Conclusion

That the application for the demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in basement 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 R3 zone in that it presents a bulk and scale that is generally consistent with that envisaged by the applicable standards that will contribute to the character of the area and not result in any adverse impacts on the residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

The site is occupied by a single storey late nineteenth century/early twentieth century dwelling, somewhat altered but retaining a number of original features.

To the north east of the site at nos.165 – 167 Coogee Bay Road is a Federation semi-detached pair listed as a heritage item under Randwick LEP 2012. The Heritage NSW database sheet for the pair describes it as:

Outstanding Federation semi, c. 1910. Complex roof form. Symmetrical with three gables. Of particular note are corner rotundas with their own slate roofs. Together with adjoining verandah feature decorative timber posts and slatted balustrades and valences (partly removed on No. 167). Upper window frames to No. 165 still retain coloured glass panes. Roughcast chimneys and decoration on gables. Only losses of integrity are railings to stairs, palisade fencing and minor detailing to No. 167 already noted). Quite capable of complete reconstruction.

Background

The original application proposed to demolish the existing building and to construct a new residential flat building comprising four storeys above basement. Due to the fall of the site, the building had a three storey scale to the street, with the upper level set back, and a three storey scale to the rear.

Heritage concerns were raised that the bulk, scale and proximity of the proposed development would dominate the single storey semi-detached cottages and may adversely impact on their liveability.

Proposal

Amended plans have now been received. As compared to the original plans, amended plans have been made various changes at carpark, ground and upper levels of the building and the height of the building has been reduced by 800mm. At carpark level the design of pedestrian and vehicular entries has been rationalised. At level 3 of the building elements relating to the terrace at the front of the building have been redesigned.

The application proposes to demolish the existing building and to construct a new residential flat building comprising four storeys above basement. Due to the fall of the site, the building has a three storey scale to the street, with the upper level set back, and a three storey scale to the rear.

Submission

The original application was accompanied by a Heritage Impact Statement prepared by Urbis which provides a Site History which notes that the site was part of the Kidman's Estate subdivision of 1888 and concluded that the dwelling was constructed in the mid 1890s. The HIS provided the following Statement of Significance for the dwelling:

It is assessed that the building currently located on the subject site would not meet any of the criteria to warrant heritage listing. The building is of no known historical or social interest, does not contain any known historical associations, is lacking in the range of representative features of its architectural type, and is not a significant rare example of its type.

While the subject site does contain typical features of the Federation period and style, this is vested primarily in the front façade. The bay windows at the front elevation remain, as well as the overall building form; however, this is largely the extent of the remaining representative features. The dwelling is typical of the period and style and is not considered aesthetically distinctive. The interior of the dwelling has been variously altered such that few original features remain. Typical interior elements including fireplaces are similarly generic.

The HIS addressed the heritage impact of demolition of the existing building, and of the proposed development on the adjacent heritage items, and concluded that:

- The proposal would not involve any physical impacts to the heritage item, *Federation semi-detached pair*.
- The proposed demolition of the subject building will not impact on any buildings or fabric of heritage significance. The subject dwelling has been assessed (section 4.3 and 4.4) and does not meet the threshold for heritage listing and is therefore not required to be retained on heritage grounds.
- The proposal has been designed in accordance with the Randwick LEP 2012 and the Randwick DCP 2013.
- The scale of development in the streetscape is mixed and incorporates single dwellings as well as low density apartment development. The subject proposal replaces a single dwelling and responds to the scale of proximate contemporary apartment development, including adjacent development to the west. The proposal softens development in the context of the heritage item through the generous front setback and provision of soft landscaping, the 2m setback to the east and the overall articulated form of the development with setback upper floor and provision of balconies and large glazed areas providing breaks in the elevations.
- The proposal is a sympathetic response to the adjacent heritage item in both form and materiality, ensuring that the new building will not visually dominate the heritage item.
- The proposal maintains views to the heritage item in the street, views from the heritage item and views to Coogee Beach, owing to the setback and sympathetic form and materiality.

The SHI made recommendations in relation to archival recording of the existing building and salvage of original leadlight windows and doors sets to the principal northern façade.

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Comments

Original heritage comments were based on photographs and floor plans provided within the Statement of Heritage Impact, and on real estate sites, as it was not possible to make a site visit to the property at the time due to pandemic restrictions.

Demolition of the existing building

Council's electronic application records do not record prior building application or development applications for the site. Council's historic aerial photographs for the site indicate no significant changes to the building envelope from 1955 to the present.

No.163 Coogee Bay Road comprises a single storey late nineteenth century dwelling in the Federation style. The dwelling is largely screened from the street by dense front garden plantings. The front of the dwelling comprises a hipped roof, while the rear of the dwelling comprises gabled wings with a central box gutter, as well as a two storey rear addition adjacent to the western side boundary. The front of the dwelling forward of the entrance comprises two large rooms (a bedroom and a living room), while the rear of the dwelling includes an open planned kitchen/dining area, and the addition provides additional bedrooms and bathrooms. The floor plan of the building includes a side entrance and generous front verandah under a part gabled and part skillion roof with shingled infill panels.

Externally, original wall surfaces possibly face brickwork, have been painted on the front façade, and on the side elevations have been rendered (or bagged), and painted. The building retains a sandstone base and sandstone pier cappings to the front verandah. A sandstone retaining wall to the front boundary is penetrated by a driveway which snakes from the western side to the eastern side of the property. Original roofing has been replaced by cement tiles.

The front living room retains shingled bow window with leadlight glazing and french doors. Internally, the original fireplace mantel has been removed. The front bedroom retains a shingled bay window with leadlight glazing and french doors within a recess featuring a spindle valance supported on decorative fretwork brackets. Internally, the fireplace retains original timber and tiled surround. New windows have been added to the side wall. Internally, it appears that original timber

skirtings largely remain, as well as a decorative plaster archway, possibly in the hallway. It appears that all original ceilings and cornices have been replaced with plain plasterboard. There are insufficient photographs to determine the extent of original windows to side elevations or original internal doors

Council has completed a heritage review of residential properties in the Randwick local government area that was undertaken by appointed heritage consultants. Council's consultants carried out this project through desktop review of data, fieldwork, and collation of submissions which were made as part of an online community consultation process which took place early last year in February 2020. No.163 Coogee Bay Road has not been the subject of any resident submission for heritage consideration. The heritage review is now complete and the Randwick Heritage Review was reported to Council in the early part of 2021.

In terms of heritage significance, no.163 Coogee Bay Road is clearly recognisable as a late nineteenth/early twentieth century building, and largely retains its original scale and form, and much of its external detailing, including fine leadlight glazing to the front windows. Externally, there have been substantial changes to materials and finishes to its walls and roof. Internally, some original detailing remains, however it appears that all decorative ceilings and cornices have been replaced with plasterboard. The dwelling does not demonstrate a high degree of intactness, as compared to dwellings which are currently listed in the heritage schedule of Randwick LEP 2012. It is considered that the building does not have sufficient heritage value on aesthetic grounds, to warrant heritage protection.

Impact of the proposal on heritage items in the vicinity

Immediately to the west of the site is a four storey residential flat building dating from the late twentieth century. Development to the east comprises the heritage items and a similar elevated semi-detached pair. Further to the east is a four storey Interwar residential flat building above street level shops, and a five storey residential flat building above street level shops, dating from the late twentieth century. On the opposite side of Coogee Bay Road is a collection of buildings comprising St Brigid's primary school, as well as two and three storey residential flat buildings and single storey dwellings.

The heritage items to the east comprise a single storey semi-detached pair elevated above the street, with garages approved in 1998. Visual impact images submitted with the current drawings depicts the scale and form of the neighbouring heritage items at nos.165-167 Coogee Bay Road. The proposal includes extensive excavation on the western boundary of the heritage items and detailed consent conditions should be included in relation to excavation and support to avoid any impact on the physical fabric of the adjacent heritage items.

The proposed development including front walls and front balcony edges has a similar setback to the adjacent heritage items and the front balconies deflect towards the semi-detached pair, reducing impact on streetscape visibility of the heritage items. The previous complex treatment of the eastern side of the development including the vehicular entrance and two pedestrian entry porticos, has now been rationalised to form a single portico which relates to the setback and scale of the garages of the neighbouring heritage items. The remainder of the front setback forms a consolidated area of soft landscaping, dominated by the established magnolia which is to be retained. The front setback treatment provides a transition between the garages of the heritage items to the east and the open front setback treatment of the development to the west. The retained magnolia is prominent in views towards the heritage items along Coogee Bay Road from the east and west.

The bulk and scale of surrounding development in Coogee Bay Road is varied. The site has a width of only 12.5m and the proposed development is around 10m higher than the eaves height of the heritage items with a side setback of 2m from the boundary of the heritage items. At level 3 of the building elements relating to the terrace at the front of the building, including roof overhang and side screening have been redesigned to reduce the prominence of the top level of the building which is set back from the lower levels. Visual impact images submitted with the current drawings indicate the proposed development in its streetscape context. Amended drawings have reduced the apparent scale and bulk of the proposed development and provide a front setback treatment which better integrates it into the surrounding streetscape setting.

Proposed materials and finishes including limestone cladding, horizontal seam metal cladding, timber finish aluminum privacy screens and timber screen fencing are generally neutral. The existing front boundary retaining wall comprises large sandstone blocks, and it is suggested that consideration could be given to reuse of these on-site landscape elements in the construction of new retaining walls and entry porticos.

Further email correspondence between Council's Heritage Officer and Assessment Officer resulted in the inclusion of the following condition of consent to mitigate the potential impact to the adjoining heritage items during excavation:

“Requirements Prior to the Commencement of any Works

An independent nominated heritage architect* is to be engaged to monitor the heritage items at Nos. 165 & 167 Coogee Bay Road throughout the demolition, excavation and construction of 163 Coogee Bay Road, Coogee and following the completion for up to 6 weeks.

The heritage architect is to undertake an initial site inspection to identify the current observable fabric. Thereafter the heritage architect is to undertake site inspections during excavation at 163 Coogee Bay Road and as and when required to identify any damage or impacts to the physical fabric during the construction works. Any required conservation works or repairs to identified construction damage are to be carried out during the construction period (or as guided by the Heritage architect).

*subject to availability, nominees are: John Oultram, Chris Roehrig and Christopher Marks. Alternate Heritage Architects could be nominated to the agreement of both parties subject to experience and availability.”

1.2. Development Engineer

Amended plans have been received which involve widening of entry driveway and new landscaped roof, reorientation of the rear ground floor level bedrooms, reduction to level 3 and internal floorplan reconfigurations.

Original proposal

Demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in basement.

This report is based on the following plans and documentation:

- Amended Architectural Plans by PBD Architects, issue F dated 26/07/2022;
- Statement of Environmental Effects by GSA Planning dated May 2021;
- Detail & Level Survey by Azimuth Surveyors dated 29/04/2022;
- Geotechnical Report by Earth Sciences dated May 2021;
- Landscape Plans by Site Image dwg's 000-501, issue C, dated 21/05/21;
- Arboricultural Impact Assessment by Bradshaw Consulting Arborists, rev C, dated 31/05/21.

General Comments

The issues previously raise in emails dated 17/11/2021 have not been fully addressed with the amended plans. There are still some issues accessing storage units and bicycle spaces independently of the carspaces. It is considered these remaining issues are minor and can be addressed by condition (see Storage and Bicycle comments).

Storage and Bicycle Parking comments

There are still some issues accessing storage units and bicycle spaces independently. Specifically:

- How does the owner of storage area 3 (ST-03) access their storage area when the adjoining carspace (belonging to Unit 4) is occupied?
- How does the owner of storage area 2(ST-02) access their storage area when the adjoining carspace (belonging to Unit 5) is occupied?

It is considered these issues can be easily resolved by swapping some carspaces. This shall include; Carspace 04 shall be reallocated/swapped with Unit 03 while carspace 05 shall be reallocated swapped with Unit 02. A suitable condition has been included in this report.

Drainage Comments

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

The stormwater must be discharged (by gravity) either:

- i. Directly to the kerb and gutter in front of the subject site in Coogee Bay Road ; or
- ii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),

Should the Stormwater be discharged to Council's street gutter or underground drainage system, an onsite stormwater detention (OSD) system will be required for this development.

Parking Comments

Parking Requirements for the development have been assessed as per the following applicable parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.

- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

The amended development will comprise of 4 x 3 bedroom units

Parking required under DCP = (4 x 1.5) + 1 (visitor)
= 7 spaces

Parking proposed = 7 spaces including 1 visitor space (complies)

Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units.

Bicycle Parking Required = 4/2 + 4/10
= 2.4
= 2 spaces

Bicycle Parking proposed = 4 spaces (complies)

Carpark Layout

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of Australian Standard 2890.1:2004.

Geotechnical Comments

The geotechnical report indicates the presence of ground water at levels below the excavation level for the basement. To allow for future fluctuations of the water table and potential seepage flows however the basement level will be required to be tanked and waterproofed.

Furthermore, due to the proposed boundary to boundary construction of the basement adequate provision must be made for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).

Appropriate conditions have been included in this report.

Undergrounding of power Comments

At the ordinary Council meeting on the 27th May 2014 it was resolved that;

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

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

Waste Management Comments

The applicant is required to submit to Council and have approved by Council's Director Planning, a Waste Management Plan (WMP) detailing waste and recycling storage and disposal for the development site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the units will operate.

Comments on the number of Waste Bins

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 rooms for normal garbage and 1 x 240L bin per 2 rooms for recycling.

i.e Garbage/recycling Bins Required = $4/2 = 2$ of each

There are no specific requirements for green waste in Part B6 of the DCP however since March of 2021 Council has introduced a Garden Organic Food organic (FOGO) collection service. As some landscape areas are also proposed it is recommended that a minimum of 1 x 240L bins also be provided for FOGO.

Total Number of BINS required	= 2(normal) + 2(recycling) + 1(FOGO)
	<u>= 5 x 240L BINS</u>

Total Number of BINS provided	= 5 x 240l bins in basement level (complies)
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1.3. Landscape Officer

There is a large quantity of vegetation that will be affected to varying degrees by this development, with the submitted Arborist Report assessing a total of thirty-seven (37) trees, and for ease of reference they have been categorised and grouped according to their location.

Coogee Bay Road frontage

On Council's Coogee Bay Road verge, uphill, just past the western site boundary, in the grass area between the vehicle crossing for this site and the driveway for the neighbouring complex at no.153-161 is a 2m tall *Livistona australis* (Cabbage Palm, Tree 1), which despite its small size is still protected by the DCP due to its location on public property, as well as being part of a formal and strategic, single species avenue planting that exists along both sides of the length of this roadway, which in time (as a group), will become the dominant feature of the streetscape.

The plans show that the crossing and basement ramp will be shifted further towards the eastern boundary, so while this palm would not be directly impacted by these external works, protection conditions and a bond still need to be imposed to ensure it is not affected by secondary impacts such as damage by trucks, machinery, deliveries and similar, with relevant measures included in this report.

Downhill to its east, and to the east of the existing vehicle crossing, centrally across the width of the subject site is a semi-mature, 8m tall *Livistona australis* (Cabbage Palm, T2), which displays good health, condition and is also protected by the DCP.

While relocating the crossing and basement ramp towards the eastern boundary as shown will then be direct conflict with the palm, this is the only spot available due to the need to preserve the *Magnolia* (T16) in the front setback of this site, towards the northwest corner, given its inclusion in

Council's Significant Tree Register

This means that the retention of T16 must be given a much higher priority and importance than T2, and subsequently means that due to a combination of the width of the Lot and the setback that must be maintained from this tree, there is no other option for the crossing than where it is currently shown, so on this basis, conditions allow removal of T2, and as an advanced replacement can be provided immediately to its west, in the same area as the existing driveway (all at the applicant's cost), this ensures that the avenue effect is maintained and there is no 'net-loss' from the streetscape.

It is noted that a DA for off-street parking at another site nearby, which also required removal of the same type of palm from the footpath was rejected at a recent Council meeting due to a strong desire to retain the avenue effect that has taken these palms decades to create; however, there is a clear distinction and different set of criteria that needs to be applied to this situation due the presence of a Significant listed Tree, as a higher level of importance needs to be applied to T16 (which cannot be considered for removal at the expense of T2, which unfortunately then creates a constraint which limits any other alternative option that would allow access while still also keeping this Palm.

Transplanting T2 is not favoured due to both the amount of work and costs involved with such a process, with the resulting need to then brace/secure/support it in its new setting until it establishes itself (whether in a street or park) raising safety/liability issues for Council and is why an advanced replacement is deemed more suitable in this case.

The other Cabbage Palms nearby, being the row to the west of the driveway for no.153-161, and then a single Palm to the east of this site, in front of no.169 (none of these assessed in Arborist Report) should not be affected given their distance from the site and all external works, and as their crowns are contained mostly within the footpath area, should also not come into conflict with trucks and similar, so conditions do not appear necessary.

Front setback

Within the eastern half of the raised front setback, between the internal driveway and northeast site corner are a group of four mature, 7m tall *Howea fosteriana* (Kentia Palms, T3-6) which while being a desirable feature species that are visible from the street, as well as being protected by the DCP, are not significant in any way, and as major excavations associated with the lowering of ground levels and construction of the new basement ramp will be performed in this same area, no objections are raised to their removal as sought.

While transplanting these palms elsewhere within the site as part of the new scheme would be possible, it has not been pursued in this case as none are significant, with the Landscape Plans showing that the new arrangement will comprise lower growing, mass-planted, shade tolerant species throughout the newly created tiers/terraces, beneath the canopy of T16, which will occupy the western half of the front setback as well as extending over/above the driveway ramp, all of which is regarded as a suitable approach as this will actually increase the prominence and presentation of T16 to the public domain.

Similarly, to their southwest, across the front wall of the existing dwelling as well as along the western edge of the internal driveway are more *Kentia Palms* (T8-15), as well as a single *Dracaena draco* (Dragon Tree, T7) which is hard up against the northeast corner of the dwelling. As was described for the others above, demolition activities as well as major civil works will need to be performed in these same areas, so their retention will not be possible, with the relevant consent granted for their removal.

The most established specimen assessed for this application is the mature 12m x 12m *Magnolia grandiflora* (Bull Bay Magnolia, T16) located in the front setback of this site, towards the northeast site corner, which appears in fair health and condition due to a slight decline in vigour as evidenced by dieback in its upper crown, but still has a strong presence in the streetscape as its canopy occupies almost the full width of this site, as well as overhanging the roadway and partially into the adjoining site to the west.

It is protected by the DCP, but more importantly, is also listed in **Volume 4 (page 220) of Council's Significant Tree Register**, which notes its significant attributes as cultural/historic/social and aesthetic appeal and is believed to date from the Inter War Period (c.1915-1940), possibly being installed during construction of the original bungalow residence.

In recognition of this, the Arborist Report has assigned it a High Landscape Significance Rating and High Retention Value, so must be viewed as a constraint to any development proposal and be incorporated as an existing site feature as part of any works.

There is an existing dry-packed sandstone retaining wall to its east, which then drops down by roughly 2 metres to meet the internal asphalt driveway, with the sandstone wall of the dwelling (front veranda) then to its south, all of which would have restricted its normal radial root spread to some degree, and are all to be demolished and this area then returned as deep soil, with the additional soil volume that will then be created (overall area of 67sqm) to benefit the tree as this will improve its future growing conditions.

While the new crossing and basement ramp will be offset several metres further away from this tree than the existing access and surfacing, to then be wholly outside of its SRZ, the potential impacts of excavations and lowering of existing ground levels still requires careful consideration, as is required by the Significant Register.

When scaled off the Carpark Plan (dwg DA2001), the western edge of the new basement ramp/wall will be offset 5800mm to its east, resulting in a 2.8% encroachment of its TPZ, the hydrant booster (after being relocated further away at Council's request) 5500mm to its southeast, with the northern wall of the basement level to then be 5230mm to its south, which is estimated to cause a 7.2% encroachment.

This combined 10% impact constitutes a major encroachment in AS4970-2009; however, it is expected that a combination of the existing asphalt driveway, sandstone wall and differences in ground level to its east will result in reduced root activity in this area, with the footprint of the existing dwelling (sandstone wall of front veranda) to its south already noted as occupying 3.8% of its TPZ, and while the northern basement wall will finish about 500mm closer to the tree, this is regarded as incremental, so major impacts are not anticipated from this one component.

The option of maintaining the crossing and driveway in their current locations is not viable as this would require existing ground levels to be significantly lowered so as to then be able to access the basement level, and would also necessitate a new footing and retaining wall to support the differences in ground levels here, and as all of these excavations would be performed to a lower depth than the existing driveway surface and wall, as well as being closer to the tree than what is currently proposed, roots are highly likely to be encountered and damaged, and is why the option of simply demolishing the existing driveway surface and wall in-situ and then returning the whole area to deep soil is regarded as a suitable outcome.

Further, Council's Development Engineers also require that basement ramps be provided at right angles to the street, for access/line of sight/safety reasons, meaning that any new wall as described above would then intersect straight through the existing raised garden area, increasing the encroachment to an unacceptable standard due the majority of the eastern side of its root plate needing to be severed.

On this basis, its preservation is feasible, but only if the scheme proceeds as is currently shown, with protection conditions requiring the appointment of a Project Arborist who must undertake and/or supervise relevant components, including demolition, the use of a sympathetic construction method for the basement level, maintaining existing ground levels/grades as well as applying the required

level of physical protection during the course of works to prevent damage both above and below ground.

Lastly, the northern edge of all upper floors (Ground-Roof Level) have been stepped back further to the south than the Basement Level, which will assist in minimising the amount of conflict with the southern aspect of its crown, so while conditions do permit clearance pruning, both to avoid damage to the tree during works, as well as to facilitate the access of machinery and the new building elevations, in recognition of its importance and inclusion on the Significant Register, a high level of control will be applied by requiring that this can only be performed by the Project Arborist, and in consultation with Council's officer.

Neighbouring site – front setback

Beyond the western site boundary, growing wholly on the adjoining private property at no.153-161, in a raised perimeter garden bed is a group of juvenile 2-4m tall *Kentia Palms* (T18-20) commencing adjacent the northwest corner of the subject dwelling then extending further to the south, with the site inspection confirming that T17 (Bangalow Palm) has already been removed and no longer exists.

While the western wall of the existing dwelling is setback 900mm from the western site/common boundary, the General Arrangement Plan – Carpark (dwg DA2001) shows that the basement will now be constructed right up onto this common boundary; however, given a combination of their small size, contained root system and their offset from the boundary, there are not anticipated to be any major impacts, with relevant protection measures included.

Neighbouring sites – rear setback

Still on the adjoining site to the west, no.153-161, and still close to the common boundary, but at the rear, and also at a higher ground level is a 6-7m tall *Agonis flexuosa* (Willow Myrtle, T32), of poor health and condition due to dieback and its excessive lean/bias to the east, towards/over this development site.

Despite being assigned Low Significance and Retention ratings, its location on another private property means that both Council and the applicant have a common law responsibility to ensure it is not affected by these works.

As was described for T18-20 above, the basement wall will be constructed closer to this tree than the existing dwelling, to now be right up onto the common boundary; however, Figure 2 on page 12 of the Arborist Report documents an existing sandstone wall in this location which supports the differences in ground level between the two sites.

While this wall would have acted as a physical barrier to prevent roots being able to grow into the development site, at the same time, the tree would have also grown and developed with a reliance on this wall for stability.

Due to its lean towards the subject site, this means that all works will be performed on the 'compression' side of its root plate, which is the less critical area of its root plate that is required for stability, with conditions specifying that either the existing stone wall must be retained in-situ with the new basement wall then butting up against it; or, if this stone wall is to be removed/replaced, then temporary shoring must be provided for the time between its demolition and construction of the basement wall so as to prevent collapse of the exposed soil profile and failure of the tree.

Conditions also allow clearance pruning where needed to avoid damage to the tree during operation of the piling rig in this area.

Still on this same neighbouring property, but further to the south, adjacent the small brick shed that is in the southwest corner of the development site, is a 17m tall *Liquidambar styraciflua* (Liquidambar, T33) which is offset at such a distance from the rear/southern basement wall and upper floors that no direct impacts should result.

The West Elevation Plan (dwg DA3003) nominates a finished level of RL30.100 for the rear common open space, which is just above existing grades, while the Building Section - Long Section Plan

(dwg DA4001) then shows existing ground levels being lowered by approximately 600mm, with the only conditions required for this tree being those that relate to retention or re-construction of the existing masonry wall/fence in the same manner that was described above for T32.

The other trees further to the south, including a Bottlebrush, will remain unaffected given their distance from all works, so conditions are not needed.

Beyond the rear/southern site boundary, growing wholly on the other neighbouring property at 5 Kidman Street, close to the common boundary, and at a higher ground level than the subject site are a stand of three large and mature native canopy trees, comprising a 14m tall *Corymbia citriodora* (Lemon Scented Gum, T34) and two 17m tall *Corymbia maculata* (Spotted Gums, T35-36) that are all in good health and condition, have been assigned a High Landscape Rating and are protected by the DCP.

Their co-joined crowns were observed to be prominent feature of the immediate area, providing a strong contribution to environmental amenity given their ability to offer a food and habitat source for native fauna, as well as assist with partial screening and separation, which benefits the occupants of several unit blocks.

The most important factor here is the presence of another existing brick retaining wall/fence across the full width of the rear boundary of this site, and as the ground level of this development site is lower than where the trees are growing, roots will not exist, in the same manner that was described above for T32-33.

The southern wall of the Basement Level is offset about 5900mm from the rear boundary, allowing a 75sqm area of undisturbed deep soil to be retained, with the same conditions discussed above, relating to retention/re-construction of this wall also having been imposed here, and as their northern aspects overhang above this development site, conditions permit minimal and selective clearance pruning to allow for the piling rig.

Trees in rear setback of development site

While the dense group of vegetation in the highest, most southern terrace area across the full width of this site have a presence in the immediate area, including a mixture of *Bangalow Palms*, *Kentia Palms* and *She-Oaks* (T21- 23-30 & 37, some of which are already dead/exempt), as well as a *Bottlebrush* (T22) near the eastern boundary/access stairs and a *Jacaranda* (T31) towards the western boundary, none are significant in anyway, and as the basement footprint will occupy this same area, can all be removed as shown, with the Landscape Plans proposing a mixed row of native evergreen and exotic trees across the full width of the rear boundary, which along with existing established neighbouring canopy trees that will be retained, should provide adequate compensation.

Landscape Plans

Despite a large quantity of vegetation being removed to accommodate this development, only T16 is identified as being significant and worthy of retention, with the new scheme showing a high level of detail that should result in a high-quality outcome for occupants, including a suitable number of replacement/compensatory trees, with conditions requiring its full implementation as part of any approval.

Appendix 2: Clause 4.6 Written Request

gsa planning

**RANDWICK LOCAL ENVIRONMENTAL PLAN (LEP) 2012
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: JM100 Pty Ltd c/o PBD Architects
SITE ADDRESS: No. 163 Coogee Bay Road, Coogee
PROPOSAL: Demolition of the existing dwelling and construction of a new residential flat building.

1. (i) Name of the applicable planning instrument which specifies the development standard:

Randwick Local Environmental Plan (LEP) 2012

(ii) The land is zoned:

R3 Medium Density Residential Zone. The objectives of the R3 Medium Density Zone are as stated:

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

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings. Clause 4.3 is stated as follows:

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.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height of Buildings Map which indicates a maximum height of 12m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The majority of the proposed four storey residential flat building will comply with the 12m building height development standard. However, a small portion of the roof at the north eastern corner of the building will have a height of up to 12.38 metres, which results in a non-compliance of up to 0.38 metres, or 3.1% (see **Figure 1** below and **Figure 2** on the following page). The variation is the result of an anomalous excavated area/drop in the existing ground line at the north eastern corner the building.

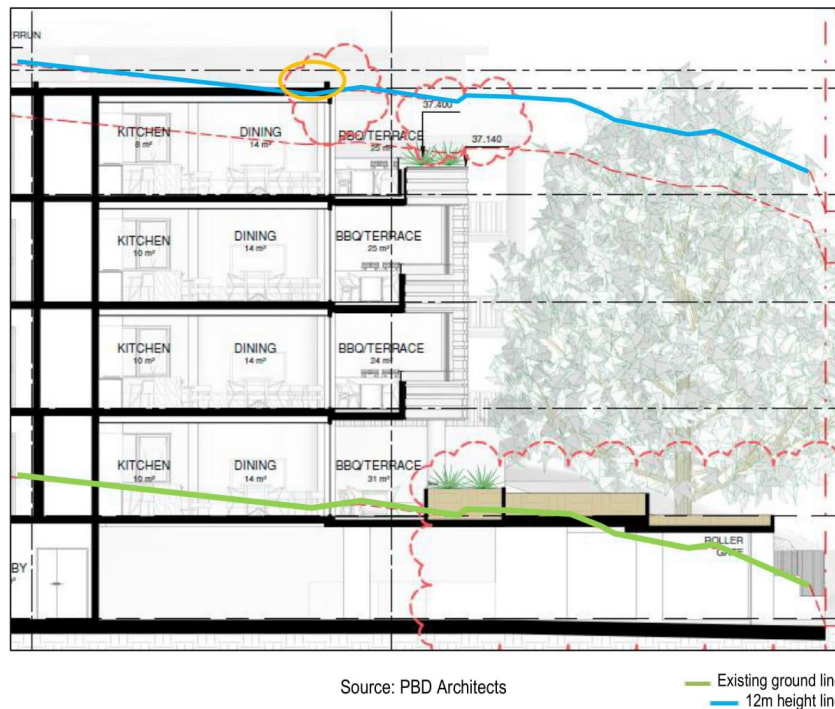


Figure 1: Proposed Long Section Showing Existing Ground Line and LEP Building Height Line (extent of height variation circled)



Source: PBD Architects

Figure 2: 3D Image Showing a 12m LEP Height Blanket (shown purple) and Extent of Height Variation Above (circled)

4. Consistency with Objectives of Clause 4.6

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 the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. It is our opinion that the proposed building height is appropriate,

given the majority of the building and roof form is under the 12m height limit. The extent of the variation is isolated to the front, north eastern corner of the proposed roof structure due to a drop in existing ground level, and is therefore a technical non-compliance.

The proposal will have a four storey appearance from Coogee Bay Road. While the variation occurs at the front of the building, it is integrated into the (otherwise) compliant roof structure. Also, as the extent of the variation is minor, it will not be easily discernible and will therefore not create visual impacts when viewed from the street.

The proposed built form has been designed to respond to the site and surrounding development, with a recessed upper floor level to create a stepped appearance and limit visual presence from the street. The height variation will allow for the provision of a well-designed residential flat building that will contribute to the evolving character of Coogee.

The proposed works offer an enhanced street presentation across the site. The use of a varied palette of materials will create visual interest. The extent of height variation will also have no adverse impact on neighbours' amenity and is consistent with a compliant envelope. Therefore, in our opinion, the proposed height provides a better planning outcome for the site. As the proposal is consistent with the objectives of Clause 4.6, the variation is acceptable in this instance.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies test one established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's minor non-compliance with the applicable height development standard, the proposal is consistent with the desired medium density character of the area. The proposal provides a height, bulk and scale that is consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the building height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Both of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a) The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b) The zone objectives (Clause 2.3);
- c) The land use table (at the end of Part 2); and
- d) The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 12m; and
 - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.9:1.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the desired future character. The permissible uses under the LEP are as follows:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture

The R3 Medium Density Residential zoning envisages residential flat buildings which is proposed on the site. The 12m height limit clearly envisages a built form of up to four storeys. The building will present as four storeys to Coogee Bay Road, consistent with what is desired in the LEP. As the majority of the proposed built form complies with the building height, the extent of variation located at the north eastern corner will not be readily discernible from the street as it is integrated into the mostly compliant roof.

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The site is surrounded by a number of residential flat buildings, many of which are between three and four storeys in height. When viewed in the context of Coogee Bay Road, the proposed residential flat building will appear as four storeys. It will be a compatible addition to the streetscape which will establish a building height consistent with surrounding properties (see **Figure 3**). The proposed area of non-compliance at the north eastern corner will not alter this compatibility.



Source: Apple Maps

Figure 3: Aerial View of Coogee Bay Road, Demonstrating the Pattern of Existing Development

The proposed built form is also consistent with approvals in the vicinity, which assist in articulating the desired future character. There are a number of examples of R3 zoned medium density developments in the LGA which have been approved under the current controls with building height non-compliances. It is recognised that each application is assessed on its own merits and each site has different characteristics. However, in accordance with *SJD*, it is a relevant consideration to understand if Council has accepted breaches to the height standard in the past, under what circumstances these were supported and if indeed there are any comparable principles to the subject development application (DA). Based on Council's Clause 4.6 Register, these include the following:

DA No.	Address	Height Variation
DA 43/2016	106 Brook Street Coogee	33%
DA 801/2015	54-56 Marine Parade Maroubra	10%
DA 35/2018	137 Carrington Road Coogee	25%
DA 502/2017	149-151 Malabar Road South Coogee	52.2%
DA 04/2021	76 Bream Street Coogee	20.4%
DA 161/2022	56 Bream Street Coogee	23%

The environmental grounds that Council accepted for breaching the standard included compatibility with the surrounding development in terms of scale, built form and context; and no unreasonable impacts on the amenity of adjoining properties or locality.

As the proposed height is consistent with the desired medium density residential character under the LEP and with other approved developments in the vicinity, it can be considered consistent with the desired future character in accordance with Objective (a).

(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 subject site is neither a heritage nor a contributory item and is not located within a heritage conservation area. However, it adjoins two semi-detached dwellings at Nos. 165 and 167 Coogee Bay Road, which are identified as heritage items under the LEP.

The surrounding neighbourhood, including the subject site, is zoned R3 Medium Density Residential. The R3 zone is characterised by predominantly residential flat buildings of varying heights, ages, and architectural styles, and interspersed with some single and two storey dwellings. Given the context of the surrounding development, the proposal is unlikely to affect the scale and character of Nos. 165 and 167 Coogee Bay Road. This is also reflected in the Heritage Impact Statement submitted with the DA, which included the following comments:

- The scale of development in the streetscape is mixed and incorporates single dwellings as well as low density apartment development. The subject proposal replaces a single dwelling and responds to the scale of proximate contemporary apartment development, including adjacent development to the west. The proposal softens development in the context of the heritage item through the generous front setback and provision of soft landscaping, the 2m setback to the east and the overall articulated form of the development with setback upper floor and provision of balconies and large glazed areas providing breaks in the elevations.
- The proposal is a sympathetic response to the adjacent heritage item in both form and materiality, ensuring that the new building will not visually dominate the heritage item.
- The proposal maintains views to the heritage item in the street, views from the heritage item and views to Coogee Beach, owing to the setback and sympathetic form and materiality.

The proposed four storey building will have its top level set back to minimise visual impacts from the street and adjoining development. Accordingly, the proposal is compatible with the scale and character of the nearby heritage item in accordance with Objective (b).

(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.

In our opinion, given the restricted location of the height non-compliance, the proposal will not result in unreasonable impacts on adjoining or nearby properties in respect of visual bulk, privacy, overshadowing and views, as outlined below.

Visual Bulk

As indicated, while the extent of height non-compliance occurs at the front of the building, it is restricted to the roof structure, and will not be readily distinguishable or substantially contribute to the visual bulk. This is because of the minor variation (0.38m) which will be integrated into the roof form of the top floor, with the remaining roof area complying with the height standard. In addition, as the top floor and roof is set back from the leading edge of the floors below, the variation (and indeed the entire roof) is read as a recessive element within the context of the existing and emerging streetscape character. In our opinion, the proposal represents a better planning outcome, compared to the option of cutting out the corner of the top floor to achieve full compliance, which will create an inconsistent design.

Privacy

Privacy will also be maintained for adjoining development. The extent of height variation occurs within the roof structure and not within wall areas that contain windows, and will therefore not create overlooking opportunities.

Views

An assessment of the view impacts under the principles of *Tenacity v Warringah Council* [2004] NSWLEC 140 indicates that there are some partial north eastern oblique views of the Pacific Ocean which are available from the upper level of development on the western side of the subject site at No. 161 Coogee Bay Road. These views are available from a standing position in the living room and across a side boundary.

In our opinion, the additional 0.38m in building height will not likely impact on views from the adjoining property. The photographic comparison in **Figure 4** below indicates that the area of non-compliance within the roof is located away from the main water view would therefore not unreasonably affect views compared to the existing situation. The roof is also set back from the main building line of the floors below which is a more skilful design, and strict compliance with the building height standard would not materially improve water views. Accordingly, the proposal is considered to be consistent with the planning principles set out in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.



Figure 4: View Impact of the Proposed Roof from Top Floor of No. 161 Coogee Bay Road

Overshadowing

As indicated, the extent of height variation is minor and restricted to the northern portion of the proposed, roof. An assessment of the proposal in respect of solar access was undertaken in the SEE submitted separately. It indicated that No. 165 Coogee Bay Road to the east would receive more than three hours solar access during the winter solstice, including parts of the main living areas and private open space. The property to the south at No. 5 Kidman Street was also shown to experience very little overshadowing as a result of the proposal and would continue to receive three hours of solar access in mid-winter.

In our opinion, the area of non-compliance is not likely to result in significant impacts in terms of visual bulk, privacy, views and overshadowing and satisfies the intent of objective (c).

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. There are sufficient environmental planning grounds to justify the FSR non-compliance. These include minor extent of variation, topography/site constraints, consistency in the context, the presentation to Coogee Bay Road and surrounding areas, maintaining environmental amenity, good design and amenity, and promoting economic and orderly development. These will now be discussed.

Extent of Variation

The extent of height non-compliance is 0.38m which equates to a 3.1% variation. In our opinion, this variation is minor and will not create adverse visual or amenity impacts, as discussed elsewhere in this document.

Topography

The site has a sloping topography from south to north. While the majority of the proposal complies with the height limit, the variation is due to an anomalous drop in the existing ground level at the front of the existing dwelling. This is isolated towards the northern portion of the site only.

Consistency in the Context

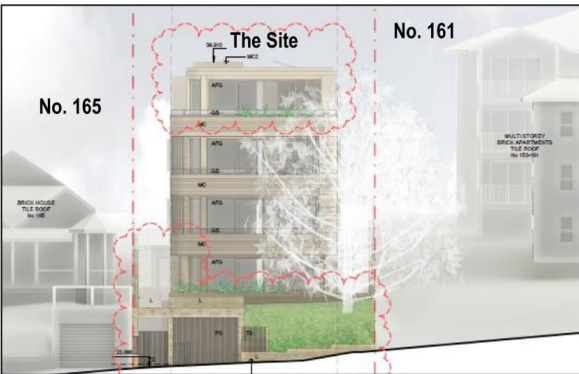
This report demonstrates the proposed building will remain compatible with nearby developments. The additional building height is restricted to the northern end of the roof of the top floor, and is integrated into an otherwise fully height compliant roof form. It will therefore not be easily discernible from the street or impact the existing characteristics of the precinct. Consistency in the context is recognised as an environmental planning ground in *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097 where Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

In our opinion, the proposal also maintains the desired future character of the locality by providing a new residential flat building in an area that is characterised predominantly by medium density development (see **Figure 3** above).

Presentation to Coogee Bay Road and Surrounding Areas

The extent of height variation will not be readily discernible from Coogee Bay Road, given it is set back from the leading edge and integrated into a mostly compliant roof form. The proposal will maintain generally compliant four storey presentation to Coogee Bay Road and surrounding areas, which is envisaged by Council. The top floor and roof will be stepped back to reflect the sloped topography, and will provide an appropriate transition between the elevated residential flat building to the west at No. 161 Coogee Bay Road and the dwelling house at No. 165 Coogee Bay Road (see **Figure 5**).



Source: PBD Architects

Figure 6: Street Elevation, Demonstrating the Transition of Built Form

Maintain Environmental Amenity

Our assessment under Test 1 above has demonstrated that, notwithstanding the height variation, the proposal will reasonably maintain neighbours’ privacy, solar access, and views. While the height variation is the result of an anomalous existing lowered ground line at the north eastern corner, it is integrated into the roof structure that predominantly complies with the height limit, ensuring the proposal relates well to surrounding developments.

Good Design and Amenity

The proposal provides a visual benefit through the provision of a high quality residential flat building. Strict compliance with the development standard would result in the northeastern corner of the top floor unit being “notched in” or removed. This would not only create complications with waterproofing and constructability; it would also appear visually incongruous and result in a poor design outcome, with no material benefit. The proposed design is considered a well-designed outcome, with no adverse impact to the amenity of adjoining properties as a result of the height variation. The proposed building envelope is a preferred design solution.

The integrated area of variation will enhance the site’s street presentation, positively contribute to the locality’s emerging character, and provide an appropriate interface with the public domain and adjoining buildings. The proposed materials have been selected to complement the character of other development in the locality. The new landscaping throughout will further soften the built form and improve streetscape appearance.

The proposal will provide additional accommodation on the site with high levels of internal and external amenity, including lift access and private open space, whilst maintaining a similar scale to the existing and emerging medium density development in the locality. Accordingly, the proposal, including the height variation, promotes good design and amenity in accordance with Object 1.3(g) of the EPA Act.

Orderly and Economic Use of Land

The site is currently an anomaly in that it is one of only a few single dwelling houses on the southern side of Coogee Bay Road that is dominated by and zoned for multi storey medium density development. The proposal will provide a residential flat building on the site which will provide additional accommodation within R3 zoned land, as envisaged by Council, promoting the orderly and economic development of the land in accordance with the objects of the EPA Act.

Accordingly, in our opinion, the height variation would be consistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It 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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality. In our opinion, the proposal is consistent with the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R3 Medium Density Residential Zone, as discussed below:

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

Response: The existing single dwelling will be replaced by a residential flat building comprising four high quality units within the medium density residential environment.

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

Response: The proposal provides three bedroom units, contributing to the variety of housing types in the medium density residential zone.

Objective: *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.*

Response: The new building presents as four storeys to Coogee Bay Road, with the top floor set back from the leading edge. The proposal will present a well-designed contemporary development which will be consistent with the existing and emerging bulk and scale of multi storey residential flat buildings.

Objective: *To protect the amenity of residents.*

Response: The proposed area of non-compliance has been assessed to have no discernible impact to neighbouring properties and will benefit the future occupants of the site.

Objective: *To encourage housing affordability.*

Response: The proposal replaces a single dwelling with four smaller dwellings that will facilitate housing affordability.

From this, we consider the proposal is in the public interest and should be supported.

7. **Clauses 4.6(4)(b) and 4.6(5) Requirements**

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a 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 Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties. The extent of height variation is located at the north eastern corner of the roof and will be well integrated into the remaining portions of the height-compliant built form.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. As noted, the proposal is compatible with other properties on Coogee Bay Road, where the existing and emerging character comprises residential flat buildings which are between three and four storeys in height. The articulated appearance will significantly enhance the consistency of the site when viewed from the public and private domain.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. **Conclusion**

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will

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be in the public interest because it is consistent with the objectives of the standard and the objectives of the R3 Medium Density Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

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Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	12m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The extent of variation is minor; The variation is the result of a drop in topography within one area on the site; The proposed height facilitates a medium density development that will remain compatible within the context of the surrounding built form; The extent of height variation will not be readily discernible from Coogee Bay Road, given the 0.38m variation is integrated into a mostly height-compliant roof form. The area of variation is also restricted to the north-eastern corner of the roof. The proposal will maintain an otherwise compliant four storey presentation to Coogee Bay Road and surrounding areas, which is envisaged by Council; When viewed from Coogee Bay Road, the proposal will have a built form that appears stepped at the top level to reflect the sloped topography, and will provide an appropriate transition between the elevated residential flat building to the west and dwelling house to the east; The proposed area of additional height generally maintains neighbours' privacy, solar access, and views. 	YES

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26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the R3 Medium Density Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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Clause 4.6 Exceptions to Development Standards – Height of Buildings
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Appendix 3: DCP Compliance Table**3.1 Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.	Site Planning		
2.1	Site Layout Options		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> • Two block / courtyard example • T-shape example • U-shape example • Conventional example 	The proposed site layout reflects the conventional example for the rectangular shape site which satisfies the provisions of the RDCP.	Yes
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (283.35sqm) is to be landscaped open space.	Site = 566.7m ² Proposed = 298.6m ²	Yes
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (141.7sqm) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting. (ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures. (iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting. (iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes. (v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Proposed = 142.4m ²	Yes
2.3	Private and communal open space		
2.3.1	Private open space		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p> <p>For residential flat buildings:</p> <p>(vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from with the dwelling.</p> <p>(vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m.</p>	Each apartment is provided with an area of POS in excess of the minimum requirements under the ADG and RDCP.	Yes
2.3.2	Communal open space		
	<p>Communal open space for residential flat buildings is to be:</p> <p>(a) Of a sufficient contiguous area, and not divided up for allocation to individual units.</p> <p>(b) Designed for passive surveillance.</p> <p>(c) Well oriented with a preferred northerly aspect to maximise solar access.</p> <p>(d) adequately landscaped for privacy screening and visual amenity.</p> <p>(e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.</p>	No communal open space provided.	<p>No</p> <p>See Key Issues for further discussion.</p>
3.	Building Envelope		
3.1	Floor space ratio		
	0.9:1	0.9:1	Yes
3.2	Building height		
	12.5m	12.38m	No
3.3	Building depth		
	<p>For residential flat buildings, the preferred maximum building depth (from window-to-window line) is between 10m and 14m.</p> <p>Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-</p>	The proposal complies with the minimum depth requirements in the DCP including the ADG.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	over, double-height or corner dwellings / units.		
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>The proposed front setback is between 1.5m (basement entry), 9.3m (basement), and 10.35-12.6m (to the splayed balconies). This is consistent with the predominant setback of neighbouring properties and provides appropriate transition between the heritage items and the neighbouring residential flat building to the west. Refer to comments from Council's Heritage Officer in relation to the heritage items and front entry structures.</p>	Yes
3.4.2	Side setback		
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 2m for sites with frontage between 12-14m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the 	<p>Minimum = 2m</p> <p>Eastern Elevation Basement = Nil Ground Level = 1m Level 1 = 2m Level 2 = 2m Level 3 = 2m</p> <p>Western Elevation Basement = Nil Ground Level = 1m Level 1 = 2m Level 2 = 2m Level 3 = 2m</p> <p>See below.</p>	Satisfactory

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>adjoining residences.</p> <ul style="list-style-type: none"> - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>		
	<p>The amended plans reduced the side setback of the ground floor level bedrooms 2 and 3 from 2m (compliant) to 1m. This was to provide north facing windows and solar access to the rear bedrooms as a result of lowering the overall building to mitigate the wall height non-compliance, visual bulk and scale. Given the level of the ground floor is 1.7m lower than the height of the adjoining heritage item at 165 Coogee Bay Road, building separation is maintained including solar access, privacy and amenity to the eastern neighbouring property. This is similar to the western boundary, where the ground floor level is 2.4m below the existing ground level at 153-161 Coogee Bay Road. Adequate separation to the neighbouring residential flat building is maintained (5.3m) and as such, no significant adverse visual or amenity impacts are likely to occur with regards to views, privacy or overshadowing.</p> <p>An assessment against the side boundary fence controls is provided in Part</p>		
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (6.7m).	Basement = 5.95m Ground Floor = 7.1m-9.7m Level 1 = 6.7m Level 2 = 5.6m-6.7m Level 3 = 5.6m-7.1m	No Yes Yes No No
	<p>The non-compliance at the basement level is satisfactory based on sufficient deep soil landscaping provided within the setback and the area required to accommodate parking/services for the future residents.</p> <p>At levels 2 and 3, the rear balconies represent a non-compliance of 1.1m with the rear setback control. This is considered to uphold the objectives in Part 3.4 for the following reasons:</p> <ul style="list-style-type: none"> • The proposal maintains a transitional setback between the adjoining heritage item to the east and the residential flat building to the west. It is noted that the RFB at 153-161 Coogee Bay Road is setback further than the proposal. • Adequate area for deep soil landscaping is provided within the rear setback which maintains the consistent rhythm of open space with the neighbouring properties to the east. • Appropriate separation between the neighbouring buildings and no significant adverse visual bulk and scale impacts are likely to occur such as an unreasonable sense of enclosure. 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none">• The proposal provides compliant solar access to the neighbouring properties.• The north-facing windows provided by the side setback non-compliance provides solar access and amenity to the future occupants.• The proposed non-compliance does not result in any adverse view impacts to the neighbouring RFB at 153-161 Coogee Bay Road as discussed in the Key Issues section.• The proposal provides the required area for deep soil landscaping, landscaping and private open space as per the provisions of the ADG and RDCP. <p>For the reasons outlined above, the non-compliance is supported in this instance.</p>		
4. Building Design			
4.1	Building façade		
	<div><div>(i)</div><div>Buildings must be designed to address all street and laneway frontages.</div></div> <div><div>(ii)</div><div>Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</div></div> <div><div>(iii)</div><div>Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</div></div> <div><div>(iv)</div><div>Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</div></div> <div><div>(vi)</div><div>Conceal building services and pipes within the balcony slabs.</div></div>	The front façade to Maroubra Road is well articulated and presents well to the street and surrounding properties. The articulation to the front facade includes balconies, recessed and projecting architectural elements, and varied building materials.	Yes
4.2	Roof design		
	<div><div>(i)</div><div>Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</div></div> <div><div>(ii)</div><div>Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</div></div> <div><div>(iii)</div><div>Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</div></div> <div><div>(iv)</div><div>Articulate or divide the mass of the roof structures on larger buildings into distinctive</div></div>	The flat roof form is consistent with the desired future character of development within the vicinity of the site. The flat roof form helps minimise the visual bulk and scale of the development when viewed from the street and neighbouring properties. The upper level is recessive in terms of the footprint and is considered to uphold the relevant controls.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. 	The proposal does not include a habitable roof space.	N/A
4.4	External wall height and ceiling height		
	(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.	Refer to assessment in the Key Issues section.	Satisfactory
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	The proposal provides 2.7m floor to ceiling heights.	Yes
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	The pedestrian and vehicular entries are clearly distinguishable.	Yes
	<p>(ii) Present new development to the street in the following manner:</p> <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat 	The building entry at the front adjacent to the eastern boundary is directly accessible and level with the street and is clearly defined. The mailboxes are accessible from the pedestrian entry adjacent to the basement and the awning provides shelter.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>buildings, provide direct entries to the individual dwellings within a development from the street where possible.</p> <ul style="list-style-type: none"> - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. <p>Postal services and mailboxes</p> <ul style="list-style-type: none"> (i) Mailboxes are provided in accordance with the delivery requirements of Australia Post. (ii) A mailbox must clearly mark the street number of the dwelling that it serves. (iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street. 		
4.6	Internal circulation		
	<ul style="list-style-type: none"> (i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 	Building circulation requirements are provided in accordance with the ADG and the RDCP.	Yes
	<ul style="list-style-type: none"> (ii) Use multiple access cores to: <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a 	N/A	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>street for sites with wide frontages or corner sites.</p> <ul style="list-style-type: none"> - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. 		
	(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.	One is unit is proposed per floor.	Yes
4.7	Apartment layout		
	<p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. <p>Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</p>	<p>Apartment layouts are provided in accordance with the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment).</p> <p>Notwithstanding, all apartments have dual aspects and are naturally cross ventilated and provided with adequate natural light.</p>	Complies with the ADG.
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	The layout of the units provides flexible furniture arrangements.	Yes
	<p>(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.</p> <p>(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.</p>	<p>All apartments are provided with compliant POS that complies with the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment).</p>	Complies with the ADG.
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8sqm and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	The proposal provides sufficient POS areas above the required areas specified for the ADG and RDCP.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12sqm. All ground floor apartments are to have direct access to a terrace.		
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	Refer to Section 6.5 for the DEAP comment and applicant's response in regard to the colours and materials.	Satisfactory
4.12	Earthworks Excavation and backfilling		
	(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it	The proposed volume of excavation and relative setbacks of the basement level are	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p>	<p>considered satisfactory due to the topography and the need to facilitate basement parking, level access within the development and usable private open space within the sides/rear setback. It is also considered that the subject site is substantially underdeveloped for the intended use within the R3 zone. For this reason, any new medium density residential development would require excavation to provide a suitable car parking arrangement. A condition is included within the consent which requires a dilapidation report (incorporating photographs of relevant buildings) to 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.</p>	
	<p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm from the side or</p>	<p>Retaining walls are proposed for the basement garage and in response to the existing ground level of the neighbouring heritage items. The retaining walls shall provide setbacks less than 900mm to the northern boundary for the basement. Appropriate conditions of consent shall be imposed. The retaining walls and fences are</p>	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing).	further discussed in Part 7.3 of the RDCP table below.	
5. Amenity			
5.1	Solar access and overshadowing		
	Solar access for proposed development		
(i)	Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	The north facing site receives compliant solar access to the living rooms and POS for each unit.	Yes
(ii)	Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	As above.	Yes
(iii)	Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.	No single aspect apartments are proposed.	Ye
(iv)	Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.	N/A	N/A
	Solar access for surrounding development		
(i)	Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Due to the orientation of the subject site, the proposed built form maintains compliant solar access to the neighbouring properties.	Yes
(ii)	At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
(iii)	Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	All habitable rooms are provided with natural daylight via windows.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Appropriate sun shading devices have been provided.	Yes
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	All habitable rooms are provided with window openings to outdoor areas.	Yes
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.	All habitable rooms are capable of natural ventilation.	Yes
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.	All apartments (100%) are cross-ventilated.	Yes
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	All kitchens (100%) have access to natural ventilation.	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	N/A	N/A
5.3	Visual privacy		
	(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.	The proposal includes adequate screening to the side elevation, complies with the ADG separation requirements and does not result in any significant adverse visual impacts to	Yes
	(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	neighbouring properties.	
5.4	Acoustic privacy		
	<p>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</p> <p>(ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</p> <p>(iii) Utilise appropriate measures to maximise acoustic privacy such as:</p> <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	Acoustic privacy will be achieved within the apartments due to separation of quiet areas from noisy areas.	Yes
5.5	View sharing		
	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over</p>	<p>Refer to Key Issues.</p> <p>It is not considered that any unreasonable view loss impacts shall occur as a result of the proposed development.</p>	Satisfactory

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Entry points to the building can be appropriately secured and will have clear lines of site.	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Direct, secure access is provided.	Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	All apartments are provided with openable habitable room windows that are capable of being secured.	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	No obstruction to lines of sight is proposed.	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	A security door to the basement access is proposed.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	The lobby areas are to be accessed by an intercom remote locking system	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	The proposal includes lighting of the common areas.	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Casual surveillance will be achieved to the street and communal areas from living rooms and private open spaces.	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	A condition is recommended to ensure compliance with this part.	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	A condition is recommended to ensure compliance with this part.	Yes
6. Car parking and access			
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	Access to the basement car park is proposed from multiple points.	Yes
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	The proposed driveway length is minimized as much as practically possible.	Yes
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	The driveway is setback a minimum distance of 2.4m from the eastern side boundary and this is considered satisfactory by Council's Engineer.	Satisfactory
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	There is no rear access.	N/A
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development.	Parking is proposed within the basement.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage.</p> <p>(c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.</p>		
6.2	Configuration		
	<p>(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.</p>	The proposal is for off-street basement car parking accessed off Coogee Bay Road. Vehicles will be able to enter and exit the site in a forward direction with adequate turning space in the basement.	Yes
	<p>(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.</p>	Council's Engineer has confirmed the 3m wide basement is satisfactory.	Satisfactory
	<p>(iv) Provide basement or semi-basement car parking consistent with the following requirements:</p> <p>(a) Provide natural ventilation.</p> <p>(b) Integrate ventilation grills into the façade composition and landscape design.</p> <p>(c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding.</p> <p>(d) Use landscaping to soften or screen any car park enclosing walls.</p> <p>(e) Provide safe and secure access for building users, including direct access to dwellings where possible.</p>	The proposed basement complies with the development standard.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: <ul style="list-style-type: none"> - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain. 		
7. Fencing and Ancillary Development			
7.1	Fencing		
	(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials (iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.	Front and side fencing is proposed containing suitable materials. The front fence is limestone cladding which is satisfactory. The side and rear boundary fences are 1.8m high, a combination of stone and timber which complies.	Yes
7.2	Front Fencing		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>(ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers.</p> <p>(iii) Construct the non-solid portion of the fence with light weight materials that are at least 30% open and evenly distributed along the full length of the fence.</p> <p>(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios:</p> <ul style="list-style-type: none"> - Front fence for sites facing arterial roads. - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. <p>Such solid fences must be articulated through a combination of materials, finishes and details, and/or incorporate landscaping, so as to avoid continuous blank walls.</p> <p>(v) The fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping.</p> <p>(vi) The preferred materials for front fences are natural stone, face bricks and timber.</p> <p>(vii) Gates must not open over public land.</p> <p>(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.</p>	<p>The low wall fence to the front boundary is a maximum height of 0.6m and steps with the slope of the land.</p>	Yes
7.3	Side and Rear Fencing		


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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).</p> <p>(ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits.</p> <p>(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</p> <p>(iv) Side or common boundary fences must be finished or treated on both sides.</p>	See below.	Satisfactory, as conditioned
	<p>The side elevations demonstrate the height of the boundary retaining walls and fences in relation to the existing ground level and neighbouring ground levels.</p> <p>The amended plans lowered the overall building by 800mm to reduce view impacts, reduce the external wall height non-compliance and the overall bulk and scale of the top floor level. As a result of lowering the overall building by 800mm, higher retaining walls and boundary fences have been included in the proposal. On balance, the higher retaining walls are considered to result in a better planning outcome as the visual impact of these structures are largely visible from the subject site (compared to the neighbouring properties) and the overall bulk and scale of the building has been reduced. It is also acknowledged that the subject site is significantly underdeveloped for the intended medium density zoning of the site.</p> <p>The amended plans included reducing the side setbacks to the rear bedrooms at the ground floor level. This was to ensure natural light and ventilation is afforded to the future occupants notwithstanding the deeper excavation required by lowering the building. For these reasons, the visual presentation to the street and neighbouring properties from the retaining walls is considered satisfactory and mitigates view impacts as discussed in the Key Issues section. Additionally, these structures are considered satisfactory from a heritage perspective (refer to the Heritage Officer's comments) and are not considered to result in adverse visual impacts to any neighbouring property.</p> <p>The side boundary fences comprise of a solid stone portion with open slats above spaced at 200mm. The height of the fence/wall steps to follow the sloping topography and at the eastern boundary, attains a maximum height of 3.1m with 800mm high open slats above (as measured from the existing ground line at the neighbouring property). At the western side, the fence is 1.6m-2m with 0.8m-1.2m open slats above.</p> <p>To minimise the visual impact of the side boundary fences, Condition 2 requires the fences to be a maximum height of 2.2m as measured from the approximate neighbouring existing ground line.</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
7.6	Storage		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m ³ (b) 1-bedroom apartments – 6m ³ (c) 2-bedroom apartments – 8m ³ (d) 3 plus bedroom apartments – 10m ³	Storage is provided in accordance with the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment).	Complies with ADG.
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	Adequate clothes drying facilities are proposed for the Units.	Complies
	(ii) Provide internal laundry for each dwelling unit.	Each unit is provided with an internal laundry.	Complies
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.	Adequate clothes drying facilities are proposed for the Units.	Complies
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. 	The A/C units are not identified for the development. Therefore, a condition is included to ensure that the AC units are not located within balconies or the roof of the proposed development.	Subject to condition.

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Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/334/2021 - 163 Coogee Bay Road, COOGEE NSW 2034 - DEV - Mr Z Jawaro

Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/334/2021

Development Consent Conditions (Medium Density Residential)



Folder /DA No:	DA/334/2021
Property:	163 Coogee Bay Road, COOGEE NSW 2034
Proposal:	Demolition of an existing dwelling and the construction of a new 4 storey residential flat building with 4 x 3 bedroom units and 7 carparking spaces in basement.
Recommendation:	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

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

Plan	Drawn by	Dated	Received by Council
General Arrangement Plan – Carpark (Drawing No DA2001 – Issue G)	PBD Architects	26/10/2022	24/11/2022
General Arrangement Plan – Ground Level (Drawing No DA2002 – Issue F)	PBD Architects	26/10/2022	24/11/2022
General Arrangement Plan – Level 1 (Drawing No DA2003 – Issue F)	PBD Architects	26/10/2022	24/11/2022
General Arrangement Plan – Level 2 (Drawing No DA2004 – Issue F)	PBD Architects	26/10/2022	24/11/2022
General Arrangement Plan – Level 3 (Drawing No DA2005 – Issue F)	PBD Architects	26/10/2022	24/11/2022
General Arrangement Plan – Roof Level (Drawing No DA2006 – Issue F)	PBD Architects	26/10/2022	24/11/2022
East Elevation (Drawing No DA3001 – Issue G)	PBD Architects	26/10/2022	24/11/2022
South Elevation (Drawing No DA3002)	PBD Architects	26/10/2022	24/11/2022

– Issue F)			
West Elevation (Drawing No DA3003 – Issue F)	PBD Architects	26/10/2022	24/11/2022
North Elevation (Drawing No DA3004 – Issue F)	PBD Architects	26/10/2022	24/11/2022
Elevations with Boundary Wall (Drawing No DA3011 – Issue A)	PBD Architects	26/10/2022	24/11/2022
Building Sections (Drawing No DA4001 – Issue E)	PBD Architects	18/11/2022	24/11/2022
Material Schedule (Drawing No. DA5001 – Issue C)	PBD Architects	25/05/2021	11/06/2021

BASIX Certificate No.	Dated	Received by Council
1202877M_02	01/11/2022	02/11/2022

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. The privacy screens to the side elevations shall be fixed. All 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. The roof solar panels must not to exceed the height of the roof parapet (RL39.60).
 - c. The height of the side boundary fences must not to exceed 2.2m as measured from the existing ground levels of the neighbouring properties.
3. The large sandstone blocks which comprise the existing front boundary retaining wall shall be reused in the construction of new retaining walls and entry porticos.

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

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

External Colours, Materials & Finishes

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

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

Heritage

6. Prior to issue of a Construction Certificate for the development, a report from a suitably qualified and experienced Heritage Structural Engineer must be provided to the satisfaction of the Certifying Authority, including the following:

- a) Geotechnical details which confirm the suitability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the proposed development and adjoining properties.
- b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings located at nos.165 – 167 Coogee Bay Road.
- c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
- d) Details of appropriate measures, monitoring regime/s and controls to be implemented during excavation and construction work, to maintain the stability and significance of the building/s located at nos.165 – 167 Coogee Bay Road.

The information shall include; details of suitable specific plant and equipment; inspection regimes; development and implementation of appropriate vibration limits; adoption of relevant standards and criteria; monitoring equipment and vibration control strategies.

- e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the *Certifying Authority*.
7. A detailed assessment of the condition of the building/s located at Nos. 165 – 167 Coogee Bay Road shall be carried out by the Heritage Structural Engineer prior to commencing works; at suitable intervals during the course of the excavation and construction work and; prior to issuing an occupation certificate for the development, which provides details of the condition of the subject building/s and which details any impacts or changes to the building which may be a result of the excavation and construction work.

A copy of the assessments and reports must be provide to the PCA, Council and owners of the subject properties.

Requirements Prior to the Commencement of any Works

8. An independent nominated heritage architect* is to be engaged to monitor the heritage items at Nos. 165 & 167 Coogee Bay Road throughout the demolition, excavation and construction of 163 Coogee Bay Road, Coogee and following the completion for up to 6 weeks.

The heritage architect is to undertake an initial site inspection to identify the current observable fabric. Thereafter the heritage architect is to undertake site inspections during excavation at 163 Coogee Bay Road and as and when required to identify any damage or impacts to the physical fabric during the construction works. Any required conservation works or repairs to identified construction damage are to be carried out during the construction period (or as guided by the Heritage architect).

*subject to availability, nominees are: John Oultram, Chris Roehrig and Christopher Marks. Alternate Heritage Architects could be nominated to the agreement of both parties subject to experience and availability.

Section 7.12 Development Contributions

9. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$3,328,083 the following applicable monetary levy must be paid to Council: \$33,280.85.

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.

Long Service Levy Payments

10. 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 Deposits

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

- \$8,000.00 - Damage / Civil Works Security Deposit

The security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the works which confirms that there has been no damage to Council's assets and infrastructure.

The developer/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge and other assets prior to the commencement of any building/demolition works.

To obtain a refund of relevant deposits, a Security Deposit Refund Form is to be forwarded to Council's Development Engineer upon issuing of an occupation certificate or completion of the civil works.

Sydney Water Requirements

12. 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.

Telecommunications infrastructure

13. Prior to the issue of a Construction Certificate in connection with this development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Principal Certifier that arrangements have been made for:

- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and;
- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

NOTE: Real estate development project has the meanings given in section 372Q of the Telecommunications Act.

Survey Infrastructure

14. Prior to the issue of any Construction Certificate, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and the Council that includes and addresses the following:

- (a) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No.11 have been made for the subject site.
- (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted upon by the proposal. If no impact is identified this must be detailed by the Registered Land Surveyor.
- (c) In the event that survey infrastructure is identified as vulnerable or will be affected or impacted upon by the approved development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject

site, including all documentation submitted as part of that application (for example the survey mark audit schedule, strategy plan and strategy report) is required.

The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace marks.

Note: Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any [survey mark](#) unless authorised to do so by the [Surveyor-General](#).

Street Tree Management

15. The applicant must submit a payment of **\$3,858.40** (GST inclusive) to cover the following costs:

- a. For Council to remove, stump-grind and dispose of the *Livistona australis* (Cabbage Palm, T2 in the Arboricultural Impact Assessment by Bradshaw Consulting Arborists, rev C, dated 31/05/21, 'the Arborist Report') from Council's Coogee Bay Road verge, to the east of the existing vehicle crossing, centrally across the width of this site, so as to accommodate the new vehicle crossing in this same location as shown, and is due purely to the need to retain the mature Magnolia in the front setback, in the northeast corner, which is included in Council's Significant Tree Register, and means that the crossing and basement ramp cannot be located anywhere else across this frontage;
- b. For Council to supply, plant and maintain 1 x 200 litre pot/bag (size at the time of planting) advanced replacement palm of the same species, back on the Coogee Bay Road verge, to the west of the new vehicle crossing and basement ramp, in the same area from where the existing vehicle crossing will be removed/demolished;
- c. A loss of amenity fee in recognition that the only reason this established native palm is being removed from public property is to accommodate the development of private property, with this part of the fee to be directed towards the planting of additional replacements of the same species elsewhere in the street so as to supplement the avenue effect.

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 its removal prior to the commencement of site works, as well as upon completion, to arrange for planting of the advanced replacement.

After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's North Area Tree Preservation & Maintenance Coordinator on 9093-6843.

Street Palm Protection

16. In order to ensure retention of the small *Livistona australis* (Cabbage Palm, T1 in the Arborist Report) which is located on Council's Coogee Bay Road nature strip, just past the western site boundary, in front of the adjoining site at 153-161 Coogee Bay Road in good health, the following measures are to be undertaken:
- a. All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk, crown and Tree Identification Number to be clearly and accurately shown in relation to the site and all external works.
 - b. Any excavations associated with the installation of new services, pipes, stormwater systems or similar over public property can only be located towards the eastern site

boundary, along either side of the new vehicle crossing, as shown on the Carpark Plan by Ace Civil Stormwater Services Pty Ltd, dwg 101, issue A, dated 21/05/21, with the Principal Certifier to ensure that all Services Plans are both prepared and then installed on-site to comply with this requirement.

- c. This palm is to be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing panels which shall be located a minimum distance of **1.5 metres** to its east and west, matching up with the kerb to its north and footpath to its south in order to completely enclose the palm for the duration of works.
- d. 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".
- e. 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.
- f. 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.
- g. A refundable deposit in the form of cash, credit card or cheque **\$1,500.00** must be paid at the Cashier on the Ground Floor of the Administrative Centre, **prior to a Construction Certificate being issued for the development** to ensure compliance with the conditions listed in this consent, and ultimately, preservation of the palm.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's 'Security Deposit Refund Application Form' and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6613).

Any contravention of Council's conditions relating to the palm at any time during the course of works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 80A (6) of the Environmental Planning and Assessment Act 1979.

Protection of neighbours trees

17. In order to ensure retention of those specimens which are located on the adjoining private property to the west, no.153-161, close to the common boundary, being a row of small *Howea fosteriana* (Kentia Palms, T18-20) adjacent the front setback, then at the rear, the *Agonis flexuosa* (Willow Myrtle, T32) and a *Liquidambar styraciflua* (Liquidambar, T33), and lastly, beyond the rear/southern boundary, wholly within 5 Kidman Street, the stand of *Corymbia citriodora* (Lemon Scented Gum, T34) and two *Corymbia maculata* (Spotted Gums, T35-36), the following measures are to be undertaken:

- a. All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks, canopies, SRZ's, TPZ's and Tree Identification Numbers to be clearly and accurately shown on all plans in relation to the works.
- b. Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as 'the Project Arborist' for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, as well as Sections 5 & 9 of the Arborist Report.
- c. The Project Arborist must be present on-site at the relevant stages of works and is to keep a log of the dates of attendance and the works performed, which is to then be

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presented as a Final Compliance Report, for the approval of the Principal Certifier, prior to any Occupation Certificate.

- d. Construction notes and details must be provided showing that a system which does not require bulk excavations or earthworks to be performed beyond the point of cut into the soil profile/final location of new structures will be used for the Basement Level walls, such as contiguous bored piers or similar.
- e. Demolition of existing structures as well as all initial excavations for footings or similar within their TPZ's must be personally supervised and/or performed by the Project Arborist, with all site staff to comply with any requirements.
- f. The existing sandstone/masonry walls along the common boundaries adjacent to T32-33 and 32-35 should ideally be retained in-situ and any new basement walls or similar butted up against them so as to minimise disturbance.
- g. If point 'f' above cannot be complied with and any of these existing walls do need to be demolished/replaced, then temporary shoring must be provided for the time between the existing walls are removed and any new wall/structure is constructed so as to prevent collapse of the soil profile and failure of the trees, given that they are growing at higher ground level than the development site.
- h. A construction methodology of how this will be achieved must firstly be approved in writing by the Project Arborist, and then also be submitted to, and be approved by the Principal Certifier, prior to the commencement of any site works.
- i. The palms (T18-20) must be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing, which shall be located to the extent shown at Section 8, Appendix B – Tree Protection Plan of the Arborist Report.
- j. 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".
- k. Where roots are encountered which are in direct conflict with the approved works, they may then be cut cleanly, only by the Project Arborist, and using only handheld tools, not machinery, with the affected areas to then be immediately backfilled.
- l. The Project Arborist and Principal Certifier must ensure compliance with all of these requirements, both on the plans as well as on-site during the course of construction, and prior to any Occupation Certificate.

Protection of Significant listed tree

18. In order to also ensure retention of the mature *Magnolia grandiflora* (Magnolia, T16) that is located in the front setback of this site, in the northwest site corner, which is included in **Volume 4 (page 220) of Council's Significant Tree Register** in good health, the following measures are to be undertaken:

- a. All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk, canopy, SRZ, TPZ and Tree Identification Number to be clearly and accurately shown on all plans in relation to the site and works.
- b. Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as '*the Project Arborist*' for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, as well as Sections 5 & 9 of the Arborist Report.

- c. The Project Arborist must be present on-site at the relevant stages of works and is to keep a log of the dates of attendance and the works performed, which is to then be presented as a Final Compliance Report, for the approval of the Principal Certifier, prior to any Occupation Certificate.
- d. All Construction Certificate plans must show that the design, setbacks and finished levels of all aspects and levels of this development will be consistent with the set of architectural plans by PBD Architects, rev E & F dated 26/07/22 and stamped received by Council 1 August 2022.
- e. Construction notes and details must be provided showing that a system which does not require bulk excavations or earthworks to be performed beyond the point of cut into the soil profile/final location of new structures will be used for the Basement Level walls, such as contiguous bored piers or similar.
- f. Distances in millimetres between the centre of its trunk and all new structures, services and similar must be shown, specifically including:
 - the western wall of the internal driveway/basement ramp being offset a minimum distance of **5800mm** to its east;
 - the Hydrant Booter being positioned on the front property boundary, hard up against the western side of the internal driveway, with the extent of works required for this component to also be approved in writing by the Project Arborist, prior to commencing;
 - the northern wall of the new Basement Level being offset a minimum distance of **5200mm** to its south.
- g. Demolition of the existing dwelling to its south, as well as the sandstone retaining wall and internal asphalt driveway surface to its east, along with all initial excavations for footings or similar within its TPZ must be personally supervised and/or performed by the Project Arborist, with all site staff to comply with any requirements issued.
- h. Following demolition/removal of the existing sandstone retaining wall and asphalt driveway as described above, the resulting area must then be in-filled with high quality garden mix so that the area to the west of the new basement ramp is provided entirely as deep soil, and will be landscaped only, with no other structures, continuous strip footings or similar to be located in this area.
- i. Prior to infilling the old driveway as described in point 'j' above, Council's Landscape Development Officer (9093-6613) must also be contacted for a joint site inspection to confirm that no major roots have been damaged. **Works cannot proceed further and an Occupation Certificate cannot be issued unless this inspection takes place.**
- j. All plans must show (by the inclusion of RL's) that the mass-planted landscaped area surrounding this tree, bounded by the western and northern site boundaries, the basement ramp to its east and the Basement Level to its south, must follow existing grades/levels.
- k. The only excavations that are permitted for services or similar to the west of the driveway includes the new Hydrant Booster assembly on the front property boundary, as well as the 150mm diameter PVC pipe and 450mm x 450mm pit that must be installed hard up against the western face of the basement ramp wall, as have been shown on the Carpark Plan by Ace Civil Stormwater Services Pty Ltd, dwg 101, rev A, dated 21/05/21, with the Principal Certifier to ensure compliance with these requirements.
- l. The Project Arborist must personally supervise/perform all excavations associated with the installation of both components described in point 'd' above and is to comply with Section 4.5.4 of AS4970-2009.

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- m. This tree must be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing panels, which shall be located to the extent shown at Section 8, Appendix B – Tree Protection Plan of the Arborist Report, so as to completely enclose/exclude the tree.
 - n. 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".
 - o. Its trunk (as well as any lower branches) must also be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
 - p. In order to prevent soil/sediment being washed over its root system, erosion control measures must also be provided at ground level around the perimeter of the TPZ.
 - q. 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 comply with these requirements.
 - r. Any new common boundary fencing within its TPZ can only be a system which is supported on localised pads, not continuous strip footings, with details confirming compliance to be shown on the Construction Certificate plans.
 - s. Where roots are encountered which are in direct conflict with the approved works detailed above, they may then be cut cleanly, only by the Project Arborist, and using only handheld tools, not machinery, with the affected areas to then be immediately backfilled.
 - t. 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

19. 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

20. 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.

Site stability, Excavation and Construction work

21. 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:
- a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.
 - b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
 - c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
 - d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
 - e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.

Traffic Conditions

22. Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splayed 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the Principal Certifier, are to be included in the construction certificate documentation.
23. The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.
24. Carspace labelled 04 on the approved plans shall be allocated to Unit 03 while carspace 05 shall be allocated to Unit 02 in order to provide accessibility to the storage areas.

Design Alignment Levels

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

Vehicle Access

- **150mm above the top of the kerb at all points opposite the kerb.**

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

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

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.

26. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$734** calculated at **\$58.00** per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.
27. The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.

The height of the building must not be increased to satisfy the required driveway gradients.

Stormwater Drainage & Flood Management

28. Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:
 - a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
 - b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
 - c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
 - d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
 - e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
 - f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.
29. The site stormwater drainage system is to be provided in accordance with the following requirements;
 - a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the

satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.

- b) The stormwater must be discharged (by gravity) either:
- Directly to the kerb and gutter in front of the subject site in Coogee Bay Road or
 - To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),

NOTES:

- Infiltration will not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the proposed infiltration area, or the ground conditions comprise low permeability soils such as clay.
- If the owner/applicant is able to demonstrate to Council that he/she has been unable to procure a private drainage easement through adjoining premises and the ground conditions preclude the use of an infiltration system, a pump-out system may be permitted to drain the portion of the site that cannot be discharged by gravity to Council's street drainage system in front of the property.

Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer in accordance with the conditions of this consent and Council's Private Stormwater Code.

- c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during a **10% AEP (1 in 10 year)** storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier. If discharging to the street gutter the PSD shall be restricted to the above or **25 L/S**, whichever the lesser.

An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an annual exceedance probability (AEP) of 1% (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1% AEP (1 in 100 year) storm.

- d) Should stormwater be discharged to an infiltration system the following requirements must be met;
- Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code.
 - The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system.

Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.
 - Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure)

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iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless the boundary is common to Council land (eg. a road, laneway or reserve).

- e) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.

- f) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.

- g) Generally all internal pipelines must be capable of discharging a 1 in 20 year storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.

- h) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:

- The base of the pit being located a minimum 300mm under the invert level of the outlet pipe.
- The pit being constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar).
- Provision of a sign adjacent to the pit stating, "This sediment/silt arrestor pit shall be regularly inspected and cleaned".

Sketch details of a standard sediment/silt arrestor pit may be obtained from Council's Drainage Engineer.

- i) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the

building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).

- j) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):
- i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
 - ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
 - iii. 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
 - iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
 - v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.

- k) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- l) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- m) Mulch or bark is not to be used in on-site detention areas.
- n) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.
- o) Any onsite detention/infiltration systems shall be located in areas accessible by residents of all units.

Site seepage/Groundwater

30. The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:

- a) Seepage/ground water and subsoil drainage (from planter boxes etc) must not be collected & discharged directly or indirectly to Council's street gutter or underground drainage system
- b) Adequate provision is to be made for any seepage/ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site).
- c) The walls of the basement level/s of the building are to be waterproofed/tanked to restrict the entry of any seepage water and subsoil drainage into the basement level/s of the building and the stormwater drainage system for the development.
- d) Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.
- e) Details of the proposed stormwater drainage system including methods of tanking the basement levels and any sub-soil drainage systems (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Principal Certifier and details are to be included in the construction

certificate. A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier.

Waste Management

31. A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, 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

32. The waste storage room/area shall be sized to contain a minimum of 5 x 240 litre bins (comprising 2 garbage bins, 2 recycle bins & 1 FOGO bin) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.
33. The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.

Public Utilities

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

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

Amended Landscape Plans

35. The Landscape Plans by Site Image dwg's 000-501, issue C, dated 21/05/21 must be amended where necessary so as to now be consistent with the set of architectural plans by PBD Architects, rev E & F dated 26/07/22 and stamped received by Council 1 August 2022.
36. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the revised scheme, submitted for the Construction Certificate, complies with the requirements specified above, with both this written statement and amended plans to then be submitted to, and be approved by, the Principal Certifier.

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

37. 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

38. 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.

Dilapidation Reports

39. 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).

Noise & Vibration Management Plan

40. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies.

A *Construction Noise & Vibration Management Plan* must be developed and implemented throughout demolition and construction work.

- a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority

Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.

- b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.
- c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.
- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.

A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.

- e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

Construction Site Management Plan

41. 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

42. 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 & Hazardous Materials

43. A *Demolition Work Plan* must be developed and be implemented for all demolition work, in accordance with the following requirements:
- 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.
 - 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 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.*

Public Liability

44. 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.

Construction Traffic Management

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

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

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

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

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

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

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

47. Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times

Public Utilities

48. Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any demolition, excavation or building works.

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning 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

49. 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

50. 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"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, driven-type piling or shoring work or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm (maximum) • As may be further limited in Noise & Vibration Management Plan • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Noise & Vibration

51. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

Construction Site Fencing

52. 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 and excavations must be properly guarded to prevent them from being dangerous to life or property.

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.*

Site Management

53. 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.
- Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.

If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.

- 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.
- 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.
- 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.

Dust Control

54. 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.*

Site Accessway

55. 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

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

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

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works,
- Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

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

Excavations & Support of Adjoining Land

57. 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.

Complaints Register

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

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

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

Survey

59. 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

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

Site Seepage & Stormwater

61. Details of the proposed connection and or disposal of any site seepage, groundwater or construction site stormwater to Council's stormwater drainage system must be submitted to and approved by Council's Development Engineering Coordinator, prior to commencing these works, in accordance with section 138 of the *Roads Act 1993*.

Details must include the following information:

- Stormwater/De-Watering Management Plan (prepared by a suitably qualified Environmental Consultant);
- Detailed plans and specifications;
 - ☐ Hydraulic engineering details of the proposed disposal/connection of groundwater or site stormwater to Council's drainage system
 - ☐ Volume of water to be discharged
 - ☐ Location and size of drainage pipes
 - ☐ Duration, dates and time/s for the proposed works and disposal
 - ☐ Details of water quality and compliance with the requirements of the *Protection of the Environment Act 1997*
 - ☐ Details of associated plant and equipment, including noise levels from the plant and equipment and compliance with the requirements of the *Protection of the Environment Act 1997* and associated Regulations and Guidelines
 - ☐ Copy of any required approvals and licences from other Authorities (e.g. A water licence from the Department of Planning/Department of Water & Energy).
 - ☐ Details of compliance with any relevant approvals and licences

Road/Asset Opening Permit

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

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

- b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
- c) Relevant Road / Asset Opening Permit fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
- d) The owner/developer must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* or occupation of the development (whichever is sooner).
- e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
- f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
- g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
- h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
- i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
- j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
- k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

Traffic Management

- 63. 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.
- 64. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.
- 65. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

Stormwater Drainage

- 66. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.

The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

Vegetation

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67. Approval is granted for removal of the following trees from within this development site, subject to full implementation of the amended Landscape Plans:
- The group of four *Howea fosteriana* (Kentia Palms, T3-6) within the eastern half of the raised front setback, between the internal driveway and northeast site corner given that major civil works associated with the new basement ramp will be performed in this same area;
 - To their southwest, across the front wall of the existing dwelling as well as along the western edge of the internal driveway, more *Kentia Palms* (T8-15) as well as a *Dracaena draco* (Dragon Tree, T7) which is hard up against the northeast corner of the dwelling for exactly the same reasons given in point 'a' above;
 - The dense group in the rear setback, in the highest, most southern terrace area across the full width of this site, being a mixture of *Bangalow Palms*, *Kentia Palms* and *She-Oaks* (T21- 23-30 & 37, some of which are already dead/exempt), as well as a *Bottlebrush* (T22) near the eastern boundary/access stairs and a *Jacaranda* (T31) towards the western boundary, as none are significant in anyway, and are also in direct conflict with the basement footprint in this same area.
- Pruning of neighbours trees**
68. Permission is granted for the minimal and selective pruning of only those lower growing, lower order branches and fronds from the following palms and trees that are located wholly on neighbouring private properties, close to the common boundaries, only where they overhang into this development site and need to be pruned in order to avoid damage to the palms/trees; or; interference with the approved works, including:
- Past the western site boundary, on 153-161 Arden Street
From the eastern aspects of the row of small *Howea fosteriana* (Kentia Palms, T18-20) towards the front of the site, then at the rear, the *Agonis flexuosa* (Willow Myrtle, T32) and a *Liquidambar styraciflua* (Liquidambar, T33);
 - Past the southern boundary, on 5 Kidman Street
From the northern aspects of the stand of three mature Gums, being a *Corymbia citriodora* (Lemon Scented Gum, T34) and two *Corymbia maculata* (Spotted Gums, T35-36).
69. This approval does not imply any right of entry onto a neighbouring property nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of these palms/trees, the applicant must negotiate with the neighbour/tree owner for access to perform this work.
- Pruning of T16**
70. Permission is also granted for the minimal and selective pruning of only those lower growing, lower order branches from the mature *Magnolia grandiflora* (Magnolia, T16) that is located in the front setback of this development site, in the northwest site corner, only where needed to avoid damage to the tree; or; interference with the piling rig or similar, to the extent discussed and shown on pages 14-15 of the Arborist Report, with those smaller, flexible type branches to also be tied back away from the works rather than being pruned off wherever possible.
71. All pruning detailed above can only be undertaken by the Project Arborist, to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).
72. Due to the inclusion of T16 in Council's Significant Tree Register, the Project Arborist must also contact Council's Landscape Development Officer on 9093-6613 (giving at least 5 working days-notice) to arrange a joint site meeting, prior to pruning, to confirm the exact location and extent permissible, with the Arborist to comply with any instructions issued by Council.

NOTE: The pruning detailed above may be performed prior to the commencement of demolition or other site works where needed so as to avoid damage being caused to the trees during site access, deliveries, the operation of site machinery or similar.

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 Report

73. 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

74. 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

75. A single and complete *Fire Safety Certificate*, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate, in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

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

Structural Certification

76. 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

77. A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web

site www.sydneywater.com.au > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

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

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

BASIX Requirements & Certification

78. 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.

Noise Control Requirements & Certification

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

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

Street and/or Sub-Address Numbering

80. 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.

Council's Infrastructure, Vehicular Crossings & Road Openings

81. The owner/developer must meet the full cost for a Council approved contractor to:
- Construct a full width concrete heavy duty vehicular crossing and layback at kerb opposite the vehicular entrance to the premises to Council's specifications and requirements.
 - Remove the redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
 - Re/construct a 1.3m wide concrete footpath along the full site frontage as required. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
82. Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature

strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

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

Service Authorities

Survey Infrastructure – Restoration

84. Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey mark must be prepared by a Registered Surveyor and submitted to the appointed certifying authority and the Council prior to the issue of an occupation certificate.

The documentary evidence is to consist of a letter Signed by a Registered Land Surveyor confirming that all requirements requested under the Surveyor-General's Approval for Survey Mark Removal under condition "Survey Infrastructure – Identification and Recovery" have been complied with.

Sydney Water

85. 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 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council **prior to the issuing of an Occupation Certificate.**

Stormwater Drainage

86. A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration 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 on the use of land" 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.

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- 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.
 - c. Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.
87. A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):
 - Finished site contours at 0.2 metre intervals;
 - The location of any detention basins/tanks with finished surface/invert levels;
 - Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
 - Volume of storage available in any detention areas;
 - The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
 - Details of any infiltration/absorption systems; and
 - Details of any pumping systems installed (including wet well volumes).
88. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.
89. The applicant shall submit to the Principal Certifier and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls of the basement have been fully tanked and waterproofed to prevent the entry of all groundwater in the basement level/s and that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter.
- Landscape Certification**
90. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the amended Landscape Plans by Site Image dwg's 000-501, issue C, dated 21/05/21, and any relevant conditions of consent.
91. Suitable strategies must then be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
92. The nature-strip upon Council's footway 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.
- Project Arborist Certification**
93. 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 Arborists Report Recommendations; the dates of attendance and works performed/supervised relating to the retention of **T16, 18-20 and 32-36**.
- Tree Protection Certification – T16**
94. Prior to any Occupation Certificate, written certification must also be obtained from Council's Landscape Development Officer (9093-6613) confirming that the requirement for joint site inspections of works in the front setback, as well as prior to pruning were performed as outlined in the 'Protection of Significant listed tree' and 'Pruning' conditions, with any other

instructions issued on site having been complied with during the course of works.

Waste Management

95. Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.
96. The waste storage areas shall be clearly signposted.

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.

Use of parking spaces

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

Management of Strata parking on-site

98. A *Strata Parking Management Plan* must be developed and implemented for the development, which includes strategies and measures to 'self-manage' resident and visitor parking within the development.

Strategies and measures may include:

- ☐ Adoption of parking by-laws;
- ☐ Installation of suitable barriers, bollards, low-height fencing and gates;
- ☐ Installation of signage and notices;
- ☐ Intercom or key card systems;
- ☐ Security systems and security personnel;
- ☐ Enforcement processes and provisions to be implemented by the Owners Corporation/Strata Management

Fire Safety Statement

99. 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* at least on an annual basis each year following the issue of the *Fire Safety Certificate*, and in accordance with 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

100. 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.

Stormwater Detention/Infiltration System

101. The detention area/infiltration system must be regularly cleaned and maintained to ensure it functions as required by the design.

Residential Parking Permits

102. All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.

103. A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street resident parking permits.

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Development Application Report No. D80/22

Subject: 24 Cliffbrook Parade, Clovelly (DA501/2021)

Executive Summary

Proposal:	Alterations and additions to the existing residential flat building, including partial demolition, reconfiguration of existing units with new terrace and balconies, changes to windows, and construction of a new level 3 comprising 1 apartment with balcony and terrace, landscaping and associated works
Ward:	North Ward
Applicant:	Mrs S Jensen
Owner:	Mrs S Jensen
Cost of works:	\$1,992,100
Reason for referral:	More than 10 submissions in objection and SEPP 65 applies

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 501/2021 for alterations and additions to the existing residential flat building, including partial demolition, reconfiguration of existing units with new terrace and balconies, changes to windows, and construction of a new level 3 comprising 1 apartment with balcony and terrace, landscaping and associated works, at No. 24 Cliffbrook Parade, Clovelly for the following reasons:

1. The proposal does not comply with Clause 4.3 Building Height development standard of Randwick Local Environmental Plan 2012. No written request to vary the development standard in accordance with Clause 4.6 of Randwick Local Environmental Plan 2012 was submitted with the application. Council therefore does not have the power to approve the application.
2. The proposal does not comply with Clause 4.4 Floor Space Ratio development standard of Randwick Local Environmental Plan 2012. The applicant's written request to vary the development standard fails to satisfy the relevant criteria under Clause 4.6 of RLEP 2012. The variation to the FSR development standard is therefore not supported.
3. The proposal does not comply with Chapter 2 Clause 2.11 Development on land within the coastal use area of State Environmental Planning Policy (Resilience and Hazards) 2021 as it will have an adverse impact on the visual amenity and scenic qualities of the foreshore area.
4. The proposal is contrary to Clause 1.2 Aims of Randwick Local Environmental Plan 2012 as it does not achieve a high standard of design.
5. The proposal does not comply with Clause 6.7 Foreshore Scenic Protection Area of Randwick Local Environmental Plan 2012 as it will have an adverse impact on the visual amenity of the foreshore area.
6. The proposal does not comply with Part B7 Transport, Traffic, Parking and Access of Randwick Council Development Control Plan 2013 as it provides insufficient number of parking spaces on the site to satisfy the parking demand generated by the development.
7. The proposal does not comply with Part C2 Section 4.4 External Wall Height of Randwick Council Development Control Plan 2013.

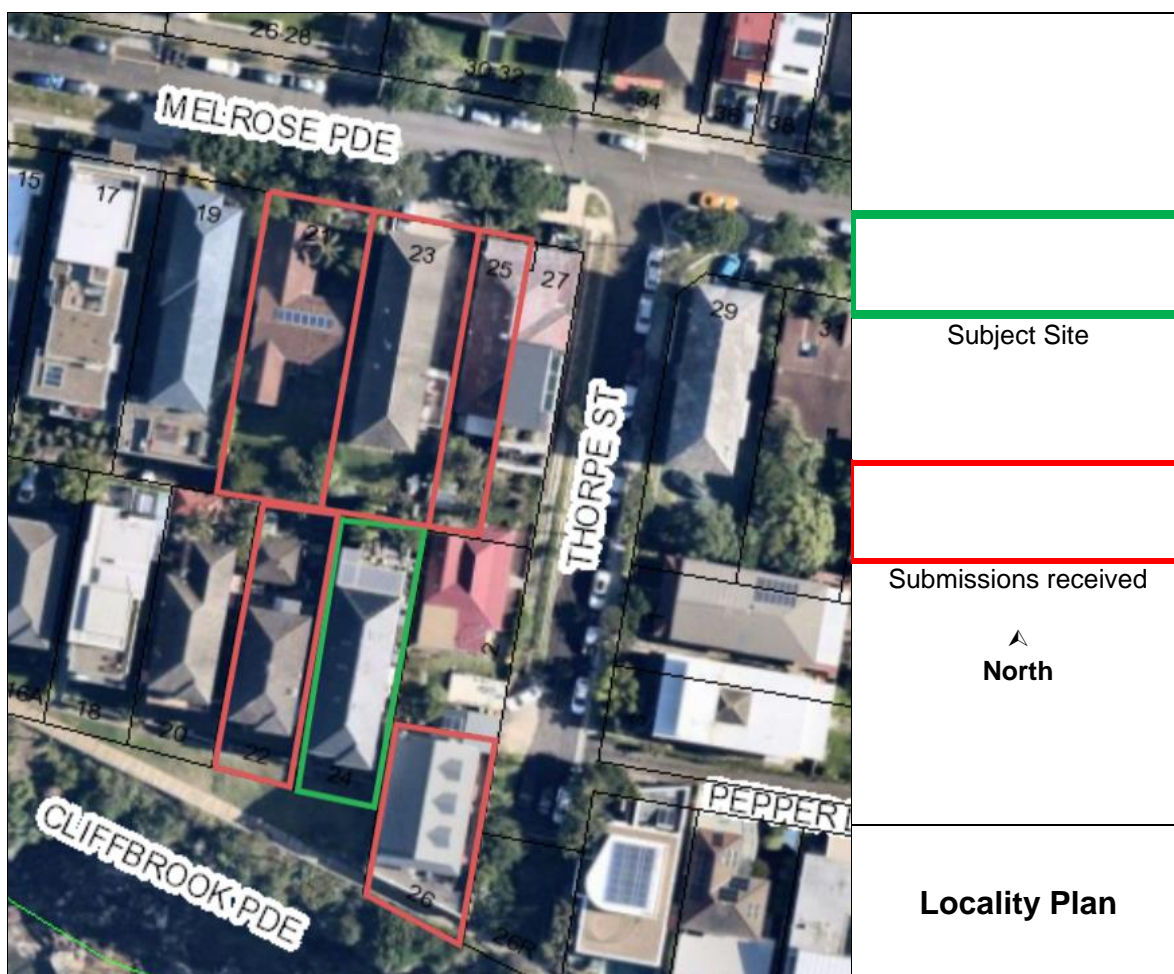
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8. The proposal does not comply with Part C2 Section 5.6 View Sharing of Randwick Council Development Control Plan 2013 as it will result in unreasonable view loss from the surrounding properties.
9. The proposal does not comply with Part C2 Section 5.3 Visual Privacy of Randwick Council Development Control Plan 2013 as it will result in unreasonable privacy impacts to the adjoining properties.
10. Insufficient information has been provided to demonstrate the existing building does not contain a 'low-rental dwelling' in accordance with Part 3 Retention of existing affordable rental housing of the former State Environmental Planning Policy (Affordable Rental Housing) 2009.

Attachment/s:

Nil



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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as more than 10 unique submissions by way of objection were received and State Environmental Planning Policy 65 (SEPP 65) – Design Quality of Residential Apartment Development applies.

The application seeks approval for alterations and additions to the existing residential flat building (RFB), including the construction of a new Level 3 comprising 1 apartment with a balcony and terrace, landscaping and associated works.

The application was publicly exhibited for a period of 14 days and 11 submissions by way of unique objection were received. Key issues raised in the submissions relate to view loss and privacy impacts.

The proposal does not comply with the maximum 0.9:1 Floor Space Ratio (FSR) development standard under Randwick Local Environmental Plan 2012 (RLEP 2012). The applicant's written request to vary the development standard fails to satisfy the relevant criteria under Clause 4.6 of RLEP 2012. The variation to the FSR development standard is therefore not supported.

The proposal does not comply with the maximum 12m Building Height development standard under RLEP 2012. The application is not accompanied by a Clause 4.6 written request in relation to the Building Height variation. Council therefore has no power to approve the application.

The proposal will have an adverse visual impact on the scenic qualities of the adjacent foreshore area and result in unreasonable view loss and privacy impacts to the surrounding properties.

The proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 24 Cliffbrook Parade, Clovelly and is legally described as Lot 6 in DP 18601. The site is regular in shape and has a 10m frontage to Cliffbrook Parade, a maximum side boundary depth of 34m and a total area of 356.6m². The site contains a 3-storey residential flat building (RFB) comprising 3 apartments, one at each level. The first floor has a garage for 3 vehicles accessed via a Right-of-Way (ROW) from Oak Street to the west.

The site slopes down approximately 4m from the rear northern boundary to the front boundary at Cliffbrook Parade. The front boundary of the site adjoins the coastal walkway along the foreshore of Gordons Bay.

The adjoining property to the west at 22 Cliffbrook Parade contains a 3 storey RFB. On 28 November 2017, Council approved alterations and additions to the existing RFB including a new upper level addition containing a 2 bedroom dwelling (DA885/2016). It is not known whether the development consent has been activated.

The adjoining properties to the east, at 26 Cliffbrook Parade and 2 Thorpe Street, contain two storey detached single dwellings.

The adjoining property to the north, at 23 Melrose Parade, contains a 3 storey RFB with 6 apartments.

Refer to **Figures 1 to 5** showing the site and context.



Figure 1 – Existing RFB on the site viewed from the coastal walkway along Cliffbrook Parade



Figure 2 – Existing garage access at the rear of the site



Figure 3 – Looking west from the rear of the site along the Right-of-Way to Oak Street



Figure 4 – Looking east from the coastal walkway



Figure 5 – Existing RFB at 23 Melrose Parade adjoining the rear of the site

3. Relevant history

Previous Determinations

On 15 November 2006, Council approved a development application (DA) for internal alterations to the existing multi-unit development including a new rear extension, enlargement of the garage area and new deck above and a new patio to lower ground floor dwelling (DA670/2006).

The consent has been modified on three occasions:

DA Number	Modification	Date Approved
670/2006/A	Council approved a modification under former Section 96(1A) of the EP&A Act to allow for demolition of existing garages at rear and the construction of new garages with same ground dimensions as existing.	17 April 2007
670/2006/B	Council approved a modification under former Section 96(2) by extending first floor level at rear, altering the roof profile, new window on southern elevation, deletion of brick fins at northern end, extension of concrete slab on eastern side and deletion of conditions 60 c), 60 d), 64, 65 & 66.	13 December 2007
670/2006/C	Council approved a modification under former Section 96(2) for a new vergola structure over part of the existing deck.	20 August 2008

Pre-Development Application

On 13 January 2021, a pre-lodgement meeting was held with Council officers (PL49/2020). The proposal involved internal reconfiguration, new windows, new front and rear-facing balconies and a new level 3 comprising a two-bedroom apartment, landscaping and associated works.

The key planning issues raised in Council's written advice included:

- loss of affordable housing under Part 3 of the former Affordable Housing SEPP
- non-compliance with the maximum Building Height development standard under RLEP 2012
- non-compliance with the maximum FSR development standard under RLEP 2012 (approx. variation of 20%)
- excessive bulk and scale at the upper level
- excessive size of the front balconies and the encroachment of the front setback and visual amenity/foreshore impacts
- concerns with privacy screening to the sides of the large terrace that contribute to bulk and scale.
- the front setback (southern) should be consistent with the prevailing setback, and it was suggested the balconies be set within the envelope of the building (subject to a setback analysis).
- the southern portion of the building does not comply with 10.5m external wall height control under RDCP 2013, and therefore consideration must be had to containing this portion of the building within a habitable roof space. Alternatively, increased setbacks might be investigated to ensure that there would be no increased overshadowing compared to a compliant habitable roof space
- the proposed 1.5m side setbacks to upper level were not supported, noting the variations to external wall height and wall length variations proposed. An increased side setback was requested to assist in breaking up the massing of the upper floor and to improve articulation.
- overshadowing, view loss and privacy impacts to the adjoining properties

Comments were also provided by Council's Design Excellence Panel (DEP). The DEP raised concerns in relation to view impacts to surrounding properties, interface with the public foreshore area and exceedance of the FSR development standard.

Timeline of events for the current DA

On 17 June 2022, Council issued an RFI raising the following issues:

- non-compliance with the maximum 0.9:1 FSR development standard under RLEP 2012
- non-compliance with the maximum 12m Building Height development standard under RLEP 2012.
- inadequate side setbacks (upper level)
- further justification required in relation to the front setback
- view loss, overshadowing and privacy impacts
- boundary wall (easement)
- right-of-carriageway
- insufficient evidence to support the claim of no low rental dwellings in accordance with the SEPP (Affordable Rental Housing)

On 5 August 2022, the applicant submitted amended plans including the following changes to the design:

- the proposed top floor apartment reduced in the size from 89m² to 78m² and sited further back to the northern portion of the sloping site by approximately 3m.
- western side setback increased by 70mm to 1.41m
- eastern side setback increased from 1.5m to 2m
- the size of the terrace also reduced from 30m² to 25m².
- removal of the proposed works to the boundary wall and the gate across the ROW.

The applicant also advised Council that additional information in relation to the view impacts and rental data would be forthcoming.

On 6 October 2022, Council advised the applicant that additional information in relation to view impacts, rental data and overshadowing remained outstanding.

Council Officers had two phone discussions with the architect and the town planner on 31 October 2022 and 17 November 2022, respectively, requesting the application be withdrawn due to insufficient information. No response has been provided at the time of writing.

The amended proposal submitted on 5 August 2022 was not formally accepted by Council due to insufficient information to enable Council to undertake a proper assessment in relation to view impacts and the retention of low-rental housing. No updated Visual Impact Assessment was submitted with the amended proposal. This assessment report is based on the originally lodged proposal.

4. Proposal

The originally lodged proposal seeks development consent for alterations and additions to the existing RFB, including partial demolition, reconfiguration of existing units with a new terrace and balconies, changes to windows, and construction of a new level 3 comprising 1 apartment with a balcony and terrace, landscaping and associated works. Extracts of the architectural plans are provided in **Figures 6 to 9**.

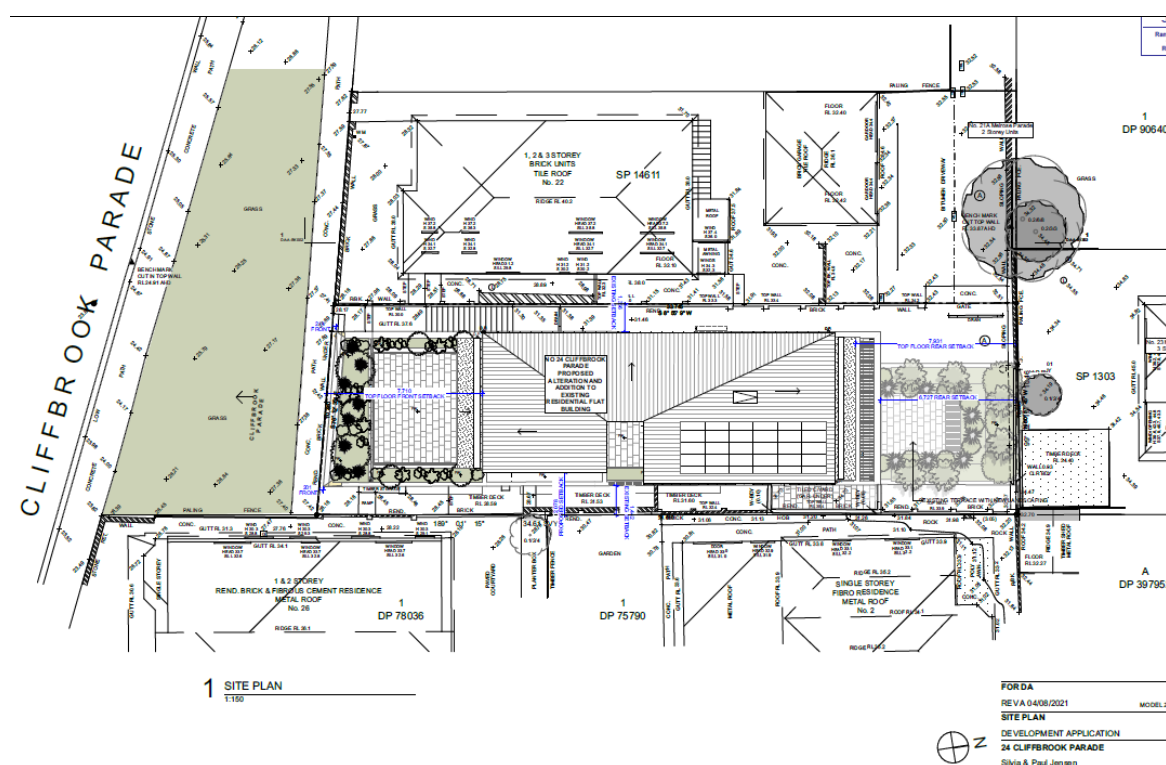


Figure 6 – Site Plan

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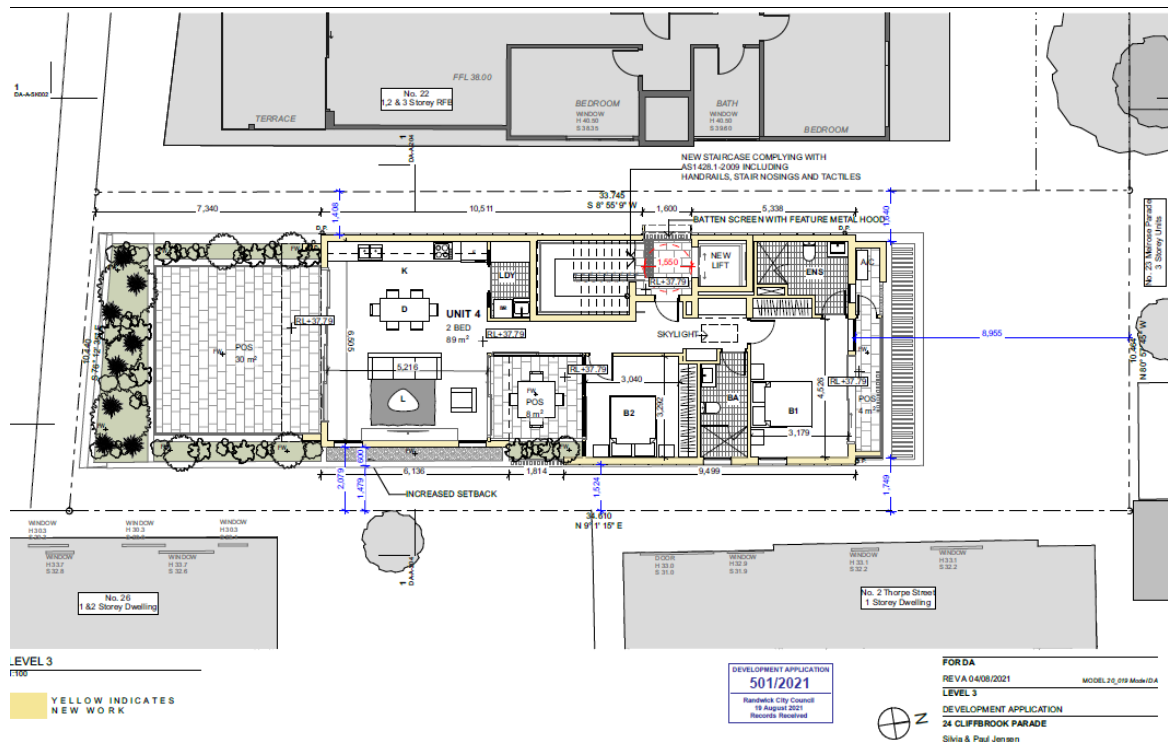


Figure 7 – Proposed Level 3

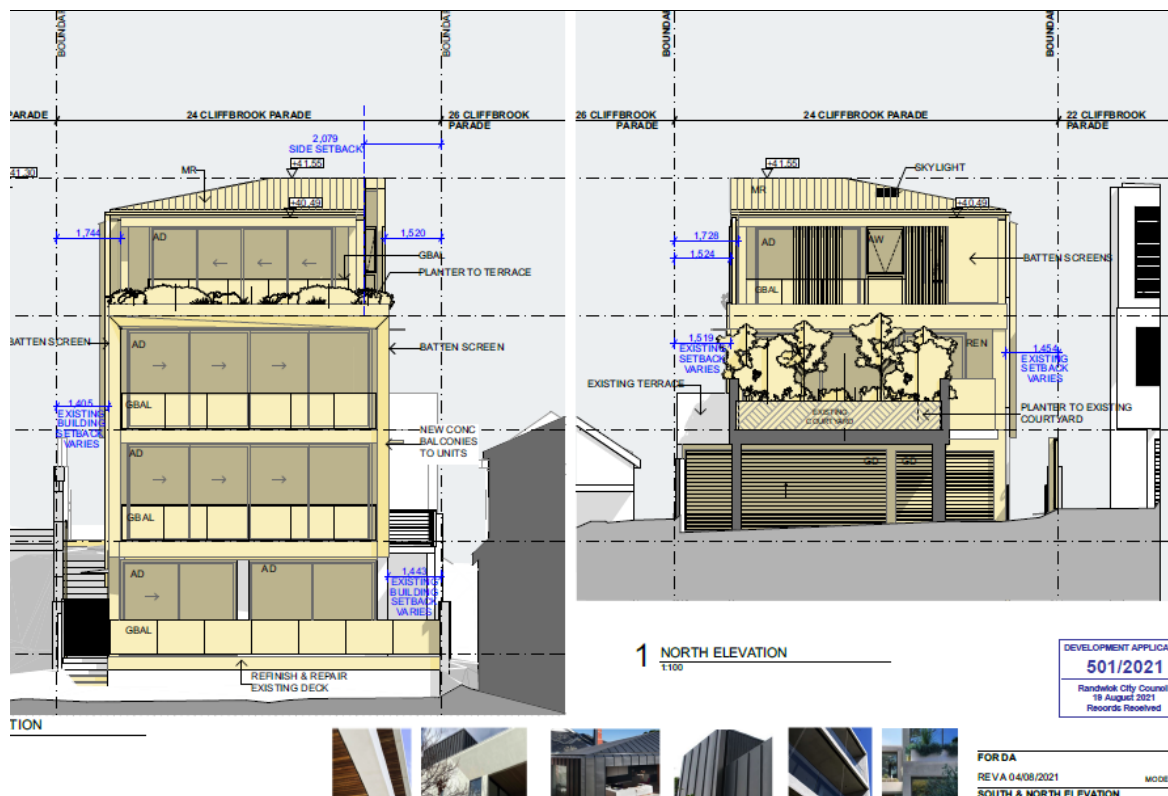


Figure 8 – Proposed North (right) and South (left) Elevation

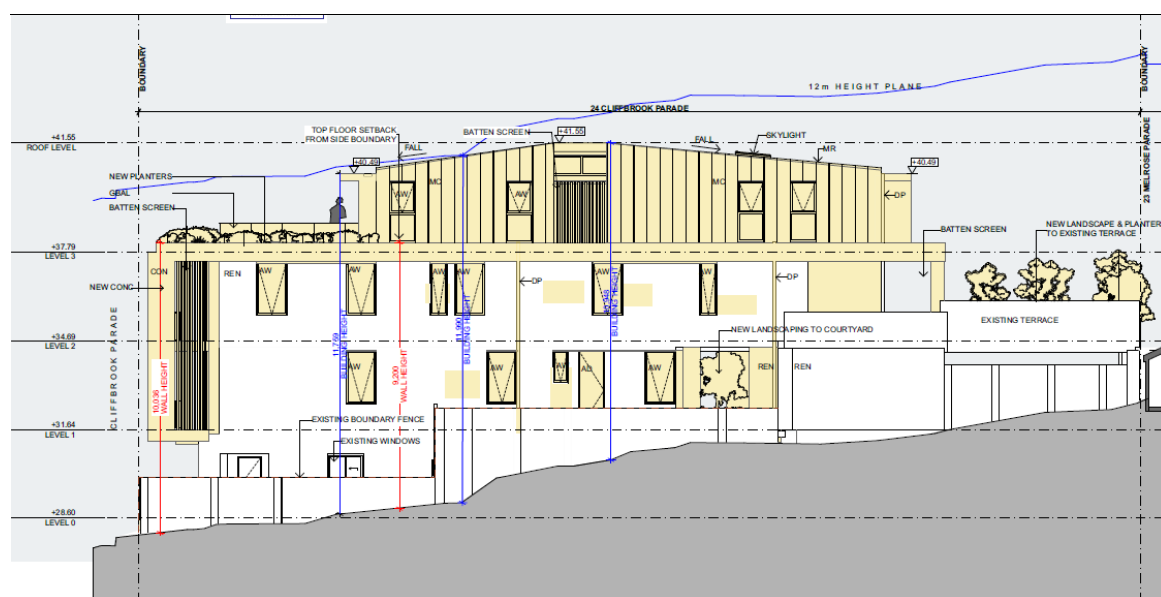


Figure 9 – Proposed East Elevation

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan 2019. The following submissions were received as a result of the notification process:

- 26 Cliffbrook Parade

Issue	Comment
View Impacts from the western windows of Gordans Bay and district	The potential view impacts from the western windows are considered to be negligible in the context of views retained. However, the proposal will have unreasonable view loss to other properties and for that reason it is not supported. Refer to Section 9.1 of this report.
Overlooking from additional balconies and windows and restriction on future development potential of 26 Cliffbrook Parade	The excessive size of the terrace adjoining the living area of the proposed apartment at Level 3 will result in adverse visual and acoustic privacy impacts to the adjoining properties.

- 2/23 Melrose Parade

Issue	Comment
Lack of due process following changes to the development on the common boundary.	Any works undertaken on the common boundary under a previous application or without proper consent are not matters for consideration under this assessment.
Overlooking/privacy from new Level 3	The rear facing balcony at Level 3 does not pose a significant privacy risk given its relatively narrow width and adjoins a bedroom which is typically low usage.
View impacts to ocean	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.

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Issue	Comment
Privacy view outlook and sunlight adversely impacts to communal rear garden	The proposal is not likely to result in any adverse impacts on the amenity of the rear communal garden.
Level 3 design inconsistent with character of the area	The size of the proposed addition at Level 3 will result in adverse visual impacts on the surrounding area and for that reason it is not supported.
Financial impact – devalue property	This is not a matter for consideration in the assessment of the application.
Conflict of interest – Applicant has contacts in Council	The applicant has not declared any affiliations or pecuniary interest on the application form.
Increase pressure on parking and congestion	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.

- 6/23 Melrose Parade

Issue	Comment
View Impacts from bedroom, dining room and lounge room to Wedding cake island and southern coastline	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Views provided by Applicant are not accurate	No certification was provided by a Registered Surveyor confirming the accuracy of the height poles that were erected or the photomontages in the SEE.
Adverse privacy impact from the proposed additional level	The excessive size of the terrace adjoining the living area of the proposed apartment at Level 3 will result in adverse visual and acoustic privacy impacts to the adjoining properties
Noise Impact	As above
Devalue property	This is not a matter for consideration in the assessment of the application.
Retaining wall on boundary encroach 21 and 23 Melrose	Any retaining wall on the boundary that is a dividing fence is dealt with under the Dividing Fences Act.
Adverse visual impact	The size of the proposed addition at Level 3 will result in adverse visual impacts on the surrounding area and for that reason it is not supported.
Due process was not followed in previous applications and lack transparency and resulted in structure being built on the boundary	Any works undertaken on the common boundary under a previous application or without proper consent are not matters for consideration under this assessment.
In adequate information eg. Site Plan is superimposed on a Survey plan	The Site Plan submitted with the application is sufficient to enable Council to undertake a proper assessment of the proposal.

- 23 Melrose Parade (no apartment number provided)

Issue	Comment
Impacts on communal garden	The proposal is not likely to result in any adverse impacts on the amenity of the rear communal garden.

Issue	Comment
Privacy/Overlooking	The rear facing balcony at Level 3 does not pose a significant privacy risk given its relatively narrow width and adjoins a bedroom which is typically low usage.
Additional level 3 resulting in view impacts to the ocean	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Undesirable precedent	The proposal in its current form is not supported.
Inappropriate design/look and feel	The design in terms of the size of the proposed addition at Level 3 is inappropriate and not supported.
Parking congestion	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.
Concern DA process and transparency	The assessment of the DA has followed due process including public notification to the neighbours.

- 23 Melrose Parade (no apartment number provided)

Issue	Comment
Privacy Impacts to balcony, living room and bedroom and communal outdoor area	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.
View impacts of the ocean	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Poor design outcome – metal box	The design in terms of the size of the proposed addition at Level 3 is inappropriate and not supported.
Financial impact – devalue property	This is not a matter for consideration in the assessment of the application
Conflict of interest – Applicant has contacts in Council	The applicant has not declared any affiliations or pecuniary interest on the application form.
Increase pressure on parking and congestion	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.

- 23 Melrose Parade (no apartment number provided)

Issue	Comment
Privacy Impacts to balcony, living room and bedroom and communal outdoor area	The rear facing balcony at Level 3 does not pose a significant privacy risk given its relatively narrow width and adjoins a bedroom which is typically low usage. The excessive size of the terrace adjoining the living area of the proposed apartment at Level 3 will result in adverse visual and acoustic privacy impacts to the adjoining properties.

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Issue	Comment
View impacts of the ocean	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Poor design outcome – metal box	The design in terms of the size of the proposed addition at Level 3 is inappropriate and not supported.
Financial impact – devalue property	This is not a matter for consideration in the assessment of the application
Conflict of interest – Applicant has contacts in Council	The applicant has not declared any affiliations or pecuniary interest on the application form.
Increase pressure on parking and congestion	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.

- 23 Melrose Parade (no apartment number provided)

Issue	Comment
Privacy Impacts to balcony, living room and bedroom and communal outdoor area	The rear facing balcony at Level 3 does not pose a significant privacy risk given its relatively narrow width and adjoins a bedroom which is typically low usage. The excessive size of the terrace adjoining the living area of the proposed apartment at Level 3 will result in adverse visual and acoustic privacy impacts to the adjoining properties.
View impacts of the ocean	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Poor design outcome – metal box	The design in terms of the size of the proposed addition at Level 3 is inappropriate and not supported.
Financial impact – devalue property	This is not a matter for consideration in the assessment of the application
Conflict of interest – Applicant has contacts in Council	The applicant has not declared any affiliations or pecuniary interest on the application form.
Increase pressure on parking and congestion	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.

- 22 Cliffbrook Parade

Issue	Comment
Obstruction of the right-of-way at the rear of the site due to existing gates to be retained across the easement The gate and the concrete structure/deck built over the easement block access. These structures are existing and will be retained. They should be removed as part of the current DA to allow reciprocal rights of access for all properties benefitting from the easement.	No concerns have been raised by Council's Development Engineer in relation to the ROW which also burdens and benefits the neighbouring properties to the west at 14-22 Cliffbrook Parade. Any matters concerning the use of the ROW is not a matter for consideration in this assessment.

Issue	Comment
Adverse overshadowing of ground and first floor living room windows. Elevation Plans should be provided	The proposal is not likely to result in any unreasonable overshadowing impacts given the north-south orientation of the site.
The proposed additional level will obstruct views to the southwest	The potential view impacts to the southwest are considered negligible in the context of views retained. However, the proposal will have unreasonable view loss to other properties and for that reason it is not supported. Refer to Section 9.1 of this report.

- 21 Melrose Parade

Issue	Comment
Loss of views from living area	The proposal will result in unreasonable view impacts and is not supported. Refer to Section 9.1 of this report.
Economic impact	There is no evidence to suggest the proposal will have an adverse economic impact.
Increased risk storm damage / wind impacts between buildings	There is no evidence to suggest the proposal will result in additional risk from storm damage or wind impacts between the buildings.
Concerns with relocation of the retaining wall along the common boundary/ ROW, impact on trees, subsidence.	Any retaining wall on the boundary that is a dividing fence is dealt with under the Dividing Fences Act. In any event the proposal is not supported in its current form.
Visual impact from Gordons Bay	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Non-compliance with FSR	The non-compliance with the FSR development standard is not supported.
Noise impacts	The excessive size of the terrace adjoining the living area at Level 3 will result in potential noise impacts to the adjoining properties
Impact on street parking	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.
Reflection from the roof	Conditions can be imposed on any consent granted to ensure the roof is anti-glare finish.

- 23 Melrose Parade – Planning consultant on behalf of the Owners Corporation

Issue	Comment
<p><i>Non-compliance with building height</i> development standard – No cl 4.6 exception submitted</p> <p>Applicant utilizes extrapolation method to measure height suitable for sites that are largely excavated and sloping. In this case the building reflects the topography. In any event using survey levels of the side pathway show the height exceeds the 12m control.</p> <p>Reduce floor to ceiling from 3m to 2.7m</p> <p>Replace low pitched roof with flat roof</p> <p>Reduce floor to ceiling height of unit 3 to 2.6m (being rebuilt)</p>	The non-compliance with the Building Height development standard is not supported.

Issue	Comment
View impact to headlands and land/water interface from units 2, 4 and 6 View loss is unreasonable because it is over the height and FSR	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
<i>Non-compliance with FSR</i> Internal private courtyard to unit 4 extends the addition Eastern side setback needs to be increased Unit to be reduced in size and centralised	The non-compliance with the FSR development standard is not supported.

- 25 Melrose Parade

Issue	Comment
Non-compliance with height and FSR	The non-compliance with the Building Height and FSR development standards is not supported.
Privacy Impacts	The excessive size of the terrace adjoining the living area of the proposed apartment at Level 3 will result in adverse visual and acoustic privacy impacts to the adjoining properties.
View Impacts/building height	The proposal will result in unreasonable view impacts from the surrounding properties and is not supported. Refer to Section 9.1 of this report.
Parking congestion	The proposal does not provide sufficient parking on the site to cater for the additional demand generated by the new apartment and it will contribute to parking congestion in the surrounding streets.
Devalue property	This is not a matter for consideration in the assessment of the application

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65) aims to promote quality design of RFBs. The proposed development involves substantial refurbishment of an existing RFB and is subject to SEPP 65. An assessment against the relevant design criteria under the Apartment Design Guide is provided in **Appendix 3**.

6.2. SEPP (Affordable Rental Housing) 2009 and SEPP (Housing) 2021

State Environmental Planning Policy (Affordable Rental Housing) 2009 was repealed on 25 November 2021, with the provisions of the ARH SEPP incorporated into the new State Environmental Planning Policy (Housing) 2021. Schedule 7A of the Housing SEPP contains saving provisions which states that the former provisions of a repealed instrument continue to apply to a development application made, but not determined, before the commencement of the SEPP. As the subject application was lodged prior to the commencement of the new Housing SEPP, the provisions of Part 3 of the ARH SEPP are still applicable. Notwithstanding this, it is noted that Part 3 of the Housing SEPP is consistent with the previous provisions and therefore assessment of the development would remain consistent with the SEPP (Housing) 2021.

The subject site and existing RFB is currently under single ownership. As the building has not been strata subdivided, nor is social housing provider accommodation or housing for seniors or people with a disability, consideration has been given to whether the provisions of Part 3 of ARH SEPP in relation to the retention of affordable rental housing are applicable.

Part 3 Retention of existing affordable rental housing, pursuant to the ARH SEPP is applicable to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss pursuant to Section 51 of the ARH SEPP.

The ARH SEPP defines a low-rental dwelling as follows:

“low-rental dwelling means a dwelling that was let at a rental not exceeding the median rental level at any time during the relevant period, as specified in the Rent and Sales Report, in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.”

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.”

The SEE submitted with the application provides an assessment against the provisions under Part 3 of the former ARH SEPP and concludes that two of the dwellings are not low rental and one is owner occupied. Council requested written evidence to support the findings such as rental receipts from the management agent and evidence proving that the owner occupies one of the units, such as utility bills for the relevant periods with the name and address of the owner or the like. The applicant has failed to provide this information.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

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

6.4. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

Chapter 2 of the Resilience and Hazards SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the *Coastal Management Act 2016*. It applies to land within the coastal zone across NSW. All foreshore land within the Randwick LGA is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the Resilience and Hazards SEPP map as ‘coastal environment area’ and ‘coastal use area’.

Development on land within the coastal environment area (clause 2.10)

The site is identified as being land within the “coastal environment area” on the Resilience and Hazards SEPP map. This requires the consent authority to consider certain factors before development consent is granted. These factors include the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)); marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; Aboriginal cultural heritage, practices and places and the use of the surf zone.

These factors have been considered in the assessment of this application. The proposal is not likely to have any adverse impact on the coastal environment and natural coastal processes.

Development on land within the coastal use area (clause 2.11)

The site is identified as being land within the “*coastal use area*” on the Resilience and Hazards SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted.

Specifically the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application. The excessive size of the proposed addition at Level 3 will have an adverse impact on the visual amenity and scenic qualities of the foreshore area.

Chapter 4 Remediation of Land

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A site inspection identified that the site is currently occupied by a residential building. A review of Council's GIS and historical aerial photos has shown that the site has been used for this purpose since prior to 1975. A search of Council's contaminated land register specifies that the site is not potentially contaminated.

In conclusion, the site is suitable for the proposed development in accordance with contamination requirements of the Resilience and Hazards SEPP.

6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R3 Medium Density under RLEP 2012. The proposal is permissible with consent in the R3 zone.

The proposal is inconsistent with the specific objective of the zone in that the built form will not protect the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.9:1	1.04:1*	No
Cl 4.3: Building height (max)	12m	12.84m**	No

* The GFA plans submitted with the application fail to include the undercroft area (10m²) and the existing kitchen to be converted to a private enclosed terrace (10m²) at ground level and the garbage room at Level 1 (5m²). These areas equate to an additional GFA of 25m² and a total GFA of 373m².

** The architectural plans show the height measured to the site boundary and not the underside of the existing slab. Council has consistently applied the latter method which equates to a proposed height of 12.84m – see **Figure 10**.

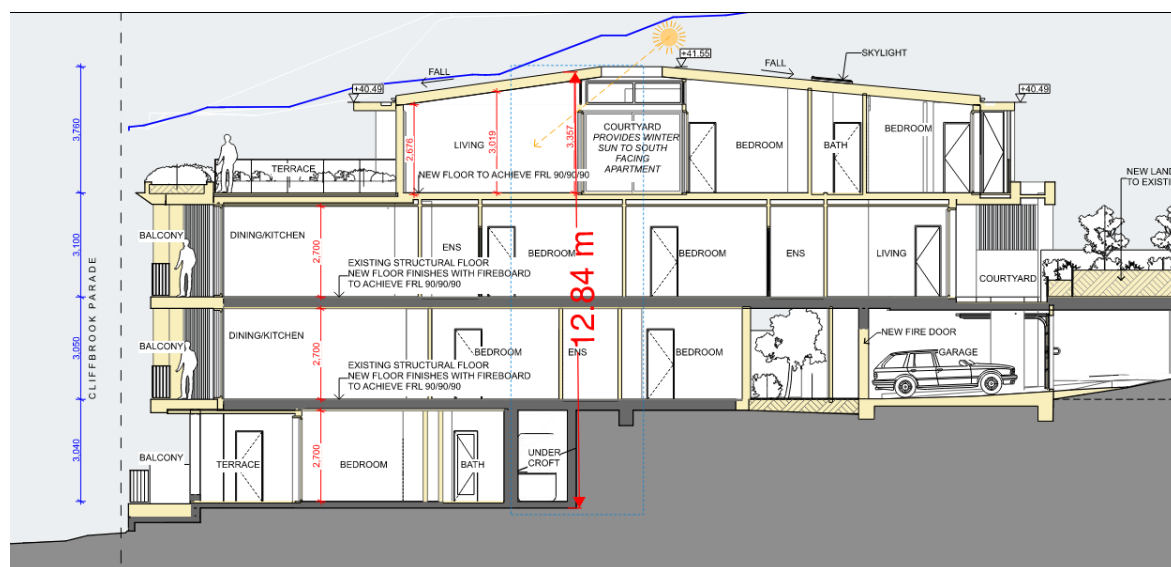


Figure 10 – Council's Building Height calculation

6.5.1. Clause 4.6 - Exceptions to development standards

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

6.5.2. Clause 6.7- Foreshore scenic protection area

The objectives of this clause are as follows-

- (a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,
 - (b) to protect and improve visually prominent areas adjoining the coastal foreshore,
 - (c) to protect significant public views to and from the coast,
 - (d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.
- (2) This clause applies to land identified as "Foreshore scenic protection area" on the [Foreshore Scenic Protection Area Map](#).
 - (3) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development—
 - (a) is located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas, and
 - (b) contributes to the scenic quality of the coastal foreshore.

The site is within the foreshore scenic protection area (FSPA). The excessive size of the proposed addition at Level 3 will have an adverse impact on the environmental and scenic qualities of the foreshore. The proposal is therefore not acceptable in terms of the objectives of the FSPA.

7. Clause 4.6 exception to a development standard

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

Clause	• Development Standard	• Proposal	• Proposed variation	• Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.9:1	1.04:1	53m ²	16

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 (CI 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*

Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 1.038:1, being a 15.3% variation from the numerical development standard.

As illustrated in External Views and Streetscape Elevation excerpts at Figures 2 & 3, the proposed alterations and additions are contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed development does not represent an overdevelopment of the site, or a development with an FSR expressed as bulk and scale that is not compatible with the context in which it is located.

To the west of the subject site at No. 18 Cliffbrook Parade is located a multi-unit housing development with recent consent and construction of alteration and additions including new upper level (DA/601/2012), approved with a 33.3% FSR variation.

On the adjoining lot to the west of the subject site at No. 22 Cliffbrook Parade is located a three-storey brick with tiled roof residential flat building. This site has the benefit of a recently approved alterations and additions including a new upper level containing a two-bedroom unit. This development included a variation the FSR (7.56%) development standard, and wall height control (DA885/2016).

The proposal is compliant with the height development standard and wall height control. The proposed development represents a high degree of compliance with the predominant LEP and DCP building envelope controls which therefore demonstrates that the FSR can be supported on the site and that strict compliance with the development standard is unreasonable or unnecessary.

Despite the FSR variation, the proposed Unit 4 provides for north facing windows and private open space for good access to sunlight, while the building depth allows for good cross ventilation through the unit.

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

All facades to the built form are highly articulated, with provision of new balconies, terrace, and courtyard plus indentations to the frontages, recessed Level 3, and new window fenestration providing improved integration and articulation to the building faced, contributing to breaking down the scale of the built form on the subject site.

Additional articulation is provided to the side elevations with proposed privacy screens, and recessed upper-level courtyard with landscape planter box that allows for solar access and cross ventilation while maintaining privacy amenity.

The height, bulk, and scale, along with the colours, materials and finishes are appropriate for the foreshore area, as the proposed RFB will sit comfortably amongst the established streetscape, with no impact to the foreshore setting expected.

- (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 approved residential flat building is not heritage listed, and the subject site is not located within proximity of a heritage item, and is not located within a heritage conservation area.

- (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 FSR non-compliance will not result in adverse amenity impacts to neighbouring properties in regards to overshadowing. Given the lot orientation, some additional overshadowing of the adjoining lots to the east and west associated with the proposed Level 3 is expected. However, shadow diagrams accompanying this application indicate

that the overshadowing impact is not significant, with two (2) hours of sunlight maintained to north facing living areas and private open space of the adjoining dwellings to the east and west. In regard to overshadowing, the shadows cast are within a built form that is compliant with the height limit development standard and wall height control, with retained existing setbacks, recessed Level 3, plus a and a modest shallow pitch gable roof, and are therefore anticipated by the controls, and are consistent with the medium-density context of the surrounding local area.

Visual and acoustic privacy impacts to adjoining neighbours have been carefully considered, with the reconfiguration of living rooms of apartments oriented to the front and rear of the site, while windows to Unit 4 side elevations are fitted with screening louvers, and retained side setbacks confirm good separation distance exists between adjoining neighbours. In this regard the amended design has increased the side setback to the southern boundary of the Level 3 addition mitigating adverse impact of the additional FSR.

The proposal has been designed and sited to ensure adequate visual and acoustic privacy between the subject site and the adjoining residential developments, and the public domain. New windows and balconies have been appropriately sited, and designed with privacy screens to provide access to sunlight, minimise potential overlooking, while providing opportunities for passive surveillance of the street, with it noted that the flat building having existing side facing balconies on Levels 1 (Ground Floor) and Level 2 and adjoining neighbours have side facing windows. (Figures 6 & 7).

Balconies, terraces, and courtyards provide opportunities for passive surveillance of Cliffbrook Parade, provided with privacy screens to retain privacy, while landscape planter boxes to Unit 3 and 4 terrace and courtyard mitigates downward overlooking (Figure 6).

Adequate retained building separation to adjoining neighbours further mitigates impacts to privacy amenity from balconies, with it considered that the proposal is compatible with the surrounding context as illustrated in Figures 8 & 9.

Given the steep topography of the subject site and surrounding landscape, plus retained building separation, in addition to the modest shallow pitch gabled roof, no significant views are affected by the proposed FSR variation.

With regard to view loss from the proposed bulk and scale to neighbouring residential development to the north of the subject site, a view analysis indicates that the view loss is not significant with views beyond the subject site to Gordons Bay and Wedding Cake Island are largely retained.

A view analysis was prepared for the assessment of this proposal, with the impact to views from the subject development proposed upper level considered to be consistent with the approved development at No. 22 Cliffbrook Parade (DA885/2016). In this regard, while it is acknowledged that there will be some minor view loss, substantial high value views are retained from these properties. In addition, in terms of compliance with the applicable standards and provisions in the RLEP2012 and the RDCP2013, the non-compliances will not materially be responsible for the view loss. The view impact of the proposed upper level addition is illustrated in Figures 10, 11, & 12.

Assessing officer's comment: The proposed apartment addition at Level 3 will increase the visual bulk and scale of the building to an unacceptable level when viewed from the adjoining residential properties and the public domain including the foreshore area. The internal courtyard on the eastern elevation and the entry foyer on the western elevation will be infilled with batten screens, thereby reducing the articulation that these recessed elements would otherwise afford to the design. The excessive size and insufficient side setbacks will result in adverse visual bulk, view loss and additional overshadowing to the surrounding residential properties. The proposal therefore does not satisfy the relevant objectives of the FSR development standard. The excessive size of the terrace and its future use would also have an adverse visual privacy impact to the adjoining residential properties. In conclusion, the applicant's written request has not adequately demonstrated that non-compliance with the FSR 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 alterations and additions will have a height, bulk, and scale compatible with the scale of the existing built form and that of the surrounding local area, and the FSR non-compliance will not have an adverse impact to surrounding properties and the streetscape in relation to significant additional overshadowing, visual impact from the bulk and scale, visual or acoustic privacy impacts, or view loss. Furthermore, the proposed alterations and additions provide for high-quality internal amenity to the existing units.

The recessed nature of the addition beyond that required by the side setback provisions and being recessed from the front and rear minimises the apparent bulk of the built form when viewed from the streetscape and when viewed from neighbouring properties. The proposed variation is therefore not responsible for any visual bulk impacts to neighbouring properties or to the streetscape.

As illustrated in External Views and Streetscape Elevation excerpts at Figures 2 & 3, the proposed alterations and additions are contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed FSR variation does not generate an overdevelopment of the site, or a development with an FSR expressed as bulk and scale that is not compatible with the context in which it is located.

The modest shallow pitch gabled roof nature of the roof design is consistent with numerous RFB in the local area, and provides for a reduced visual bulk and scale impact, and compliant maximum building height, as the roof form balances with the sloping site. In this regard, the proposal is for a maximum roof RL height (RL41.55) representing a minor 1.75m height increase on the existing ridge height (RL39.8).

The proposal has been designed to have a variety of features including indentation and recesses and steps in the floor levels, privacy screens, plus landscape planters with the variation providing suitable articulation to the built form and building façade. Furthermore, a range of materials and finishes are proposed to be incorporated to provide visual interest and character to the development so as to reduce the visual bulk of the built form when viewed from surrounding properties and the streetscape (Figures 2 & 3).

The FSR non-compliance will not result in adverse amenity impacts to neighbouring properties in regards to overshadowing. Given the lot orientation, some additional overshadowing of the adjoining lots to the east and west associated with the proposed Level 3 is expected. However, shadow diagrams accompanying this application indicate that the overshadowing impact is not significant, with two (2) hours of sunlight maintained to north facing living areas and private open space of the adjoining dwellings to the east and west. In regard to overshadowing, the shadows cast are within a built form that is compliant with the height limit development standard and wall height control, with retained existing setbacks, recessed Level 3, plus a and a modest shallow pitch gable roof, and are therefore anticipated by the controls, and are consistent with the medium-density context of the surrounding local area.

The proposal has been designed and sited to ensure adequate visual and acoustic privacy between the subject site and the adjoining residential developments, and the public domain. New windows and balconies have been appropriately sited, and designed with privacy screens to provide access to sunlight, minimise potential overlooking, while providing opportunities for passive surveillance of the street, with it noted that the flat building having existing side facing balconies on Levels 1 (Ground Floor) and Level 2 and adjoining neighbours have side facing windows. (Figures 6 & 7).

Balconies, terraces, and courtyards provide opportunities for passive surveillance of Cliffbrook Parade, provided with privacy screens to retain privacy, while landscape planter boxes to Unit 3 and 4 terrace and courtyard mitigates downward overlooking (Figure 6).

A view analysis was prepared for the assessment of this proposal, with the impact to views from the subject development proposed upper level considered to be consistent with the approved development at No. 22 Cliffbrook Parade (DA885/2016). In this regard, while it is acknowledged that there will be some minor view loss, substantial high value views are retained from these properties. In addition, in terms of compliance with the applicable standards and provisions in the RLEP2012 and the RDCP2013, the non-compliances will not materially be responsible for the view loss. The view impact of the proposed upper level addition is illustrated in Figures 10, 11, & 12.

Views from the foreshore areas and Cliffbrook Parade pedestrian walkway will be of a built form that is compatible with neighbours (Figure 2).

Assessing officer's comment: The proposed apartment addition at Level 3 will increase the visual bulk and scale of the building to an unacceptable level when viewed from the adjoining residential properties and the public domain including the foreshore area. The proposal will result in adverse privacy impacts, view loss and additional overshadowing to the surrounding residential properties. In conclusion, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and R3 medium density zone is provided below:

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of R3 Medium Density zone

The objectives of the Residential R3 Medium Density zone are:

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

Assessing officer's comment: The proposed development will not protect the amenity of residents and it is inconsistent with the relevant objective of the R3 zone. Therefore, the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

There would be a public benefit in maintaining the development standard in this instance as it would minimise the visual impact of the development when viewed from the public domain including the foreshore area.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied and the variation to the FSR development standard cannot be supported.

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 4**.

Note: Clause 6A of SEPP 65 states:

(1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following:

- (a) visual privacy,*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.*

(2) If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

(3) This clause applies regardless of when the development control plan was made.

Consequently, where the RDCP 2013 provides controls in relation to the matters listed in item (1), the assessment has been made against the relevant controls in parts 3 and 4 of the ADG (refer to Appendix 3) rather than those in the RDCP 2013.

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	See discussion in Sections 6 & 7 and Key Issues below.

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
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 RDCP 2013. See table in Appendix 4.
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 inconsistent with the dominant residential character in the locality.</p> <p>The proposal will result in detrimental visual amenity impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the apartment addition at Level 3 of a size that is proposed. Therefore, the site is considered unsuitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and it will result in amenity impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Key Issues

Non-compliance with FSR development standard

A maximum FSR of 0.9:1 applies to the site under RLEP 2012. The proposed development has a maximum FSR of 1.04:1, which exceeds the FSR development standard by 53m² or 16%.

The applicant submitted a clause 4.6 written request with the application seeking an exception to the development standard. Whilst the existing building exceeds the FSR development standard, the proposed apartment addition at Level 3 will increase the visual bulk and scale of the building to an unacceptable level when viewed from the adjoining residential properties and the public domain, including the foreshore area. Furthermore, the proposal will result in unreasonable view impacts, privacy impacts and additional overshadowing to the surrounding residential properties.

The applicant's written request seeking an exception to the development standard fails to adequately address those matters that are required to be demonstrated pursuant to Clause 4.6 of RLEP 2012. The non-compliance with the FSR development standard is not supported.

View Impacts

Part C1 Section 5.6 of RDCP 2013 establishes the concept of view sharing to ensure equitable distribution of views between development and neighbouring dwellings and the public domain.

The NSW Land and Environment Court has developed a planning principle relating to view sharing based on the case of *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140. Where view loss is likely to occur development proposals must address the view impact requirements of RDCP 2013 and the planning principle.

The submissions raising concerns in relation to view impacts relate to the following properties:

- 21 Melrose Parade (single dwelling)
- 23 Melrose Parade (RFB - apartments 2, 4 and 6)
- 25 Melrose Parade (single dwelling)
- 26 Cliffbrook Parade (single dwelling)
- 22 Cliffbrook Parade (single dwelling)

An inspection was not undertaken from the adjoining properties to the west and east at 22 and 26 Cliffbrook Parade, respectively, as the existing primary views to the south will not be affected by the proposal. Based on inspection from the front of these properties, the potential view impact is considered to be negligible in the context of the existing views that will be retained to the south. An inspection was also not undertaken from 25 Melrose Parade as any views are limited due to intervening development and topography. The potential views impacts are considered from the properties at 21 and 23 Melrose Parade to the north of the site. A site inspection was undertaken by Council Officers on the 5 and 11 May 2022. **Figures 11 to 15** show the existing views currently attained from the respective properties.

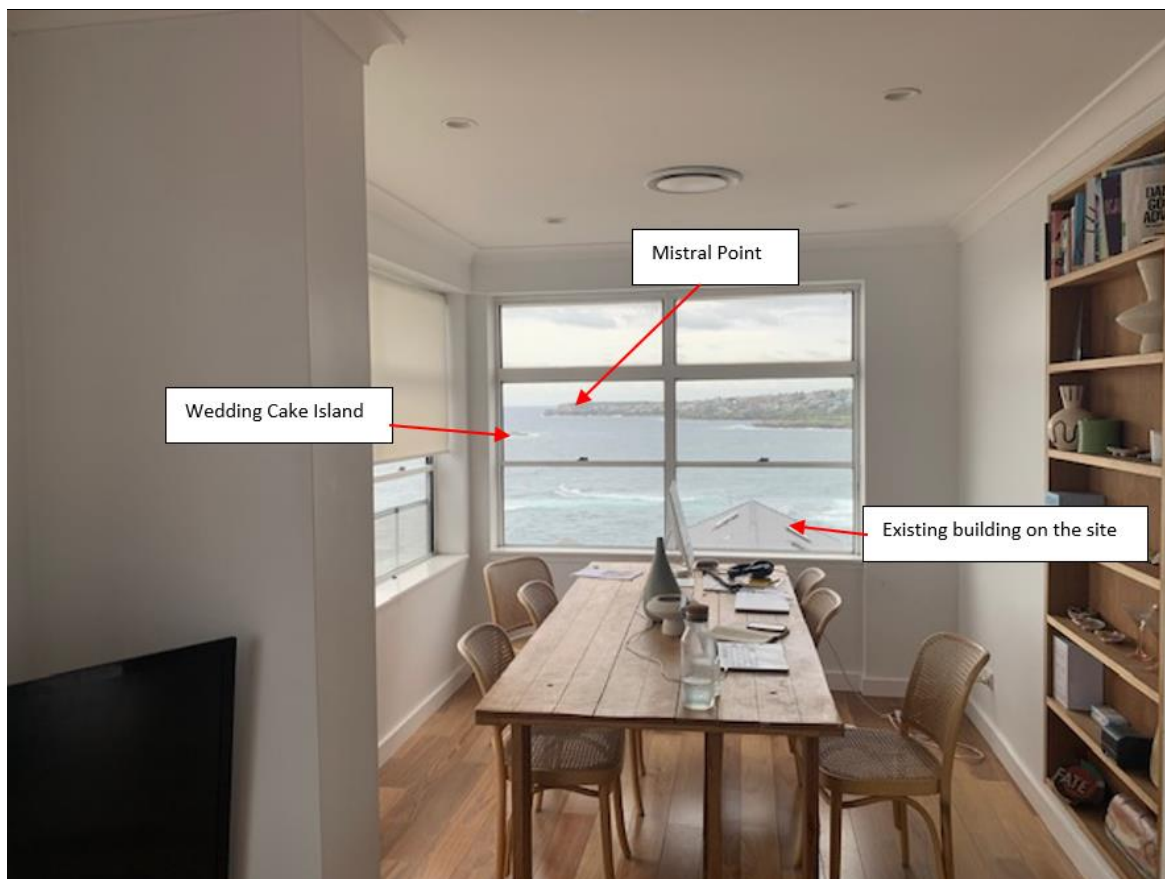


Figure 11 – View looking south from the dining room at unit 6 (top floor) 23 Melrose Parade



Figure 12 – View looking south from the balcony adjoining the living/dining room at unit 4 (mid-level) 23 Melrose Parade



Figure 13 – View looking south from the bedroom at unit 2 (lower level) 23 Melrose Parade



Figure 14 – View looking south from living/dining room at 21 Melrose Parade



Figure 15 – View looking south from the balcony adjoining living/dining room at 21 Melrose Parade

To assess whether the extent of view loss resulting from the amended proposal is reasonable, an analysis has been undertaken with reference to the Land and Environment Court Planning Principle established in the matter of *Tenacity Consulting v Warringah* (2004) NSWLEC 140:

The view loss assessment is carried out against the following four step process:

1. Quality of Views:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The existing views are described in the table and illustrated in the photos above (**Figures 1 to 4**).

Address	Type of View	Location/Position
21 Melrose Parade	<ul style="list-style-type: none"> land/water interface and headland views to the south Wedding Cake Island to the south ocean views to the east 	<ul style="list-style-type: none"> balcony adjoining dining room, living/dining room and family room in a standing position
2/23 Melrose Parade	<ul style="list-style-type: none"> ocean views to the south partial headland/district views to the south 	<ul style="list-style-type: none"> bedroom in a standing position
4/23 Melrose Parade	<ul style="list-style-type: none"> land/water interface and headland views to the south Wedding Cake Island to the south ocean views to the east 	<ul style="list-style-type: none"> balcony adjoining living room, dining/living room and bedroom in a standing position
6/23 Melrose Parade	<ul style="list-style-type: none"> land/water interface and headland views to the south Wedding Cake Island to the south ocean views to the east 	<ul style="list-style-type: none"> living area, dining/living area and bedroom in a standing position

2. Reasonable Expectation of View Retention:

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The existing views to the south from 21 and 23 Melrose Parade are attained from the balconies and living areas across the rear boundary in a standing position.

3. Extent of Impact:

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The Applicant's SEE provides a photomontage comparison of the existing and proposed view from 23 Melrose Parade.



Figure 10: View impact to ground floor of adjoining lot to the rear the subject site



Figure 11: View impact to first floor of adjoining lot to the rear the subject site



Figure 12: View impact to second floor of adjoining lot to the rear the subject site

Figure 16 – Applicants photomontage from 23 Melrose Parade (existing left and proposed right)

The applicant also erected height poles showing the proposed top level addition (refer to **Figure 17**). No details have been provided confirming the accuracy of the height poles by a Registered Surveyor.



Figure 17 – View looking south from balcony at 21 Melrose Parade with height poles

The extent of view impact is considered in the table below.

Address	Extent of View Impact
21 Melrose Parade	<ul style="list-style-type: none"> severe loss of ocean and Wedding Cake Island view to the south
2/23 Melrose Parade	<ul style="list-style-type: none"> minor loss of sky view to the south
4/23 Melrose Parade	<ul style="list-style-type: none"> moderate loss of ocean and headland view to the south the existing view of Wedding Cake Island will be retained
6/23 Melrose Parade	<ul style="list-style-type: none"> moderate loss of ocean view to the south the headland and land/water interface views and Wedding Cake Island will remain unaffected.

4. Reasonableness of Proposed Development:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbors. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The severe impact on the iconic Wedding Cake Island views to the south from 21 Melrose Parade is attributed to the proposed apartment addition at Level 3. The view impact is a result of the non-compliance with the building envelope controls in terms of FSR, building height and setbacks. The view impact is therefore considered to be unreasonable. A more considered design approach, such as a reduction in the size and increased setbacks, would likely reduce the view impacts to the surrounding properties without compromising the amenity of the proposed apartment addition at Level 3. The proposal in its current form is not supported.

10. Conclusion

That the application for alterations and additions to the existing residential flat building, including partial demolition, reconfiguration of existing units with new terrace and balconies, changes to windows, and construction of a new level 3 comprising 1 apartment with balcony and terrace, landscaping and associated works be refused

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

Council's Development Engineer provided the following comments:

Parking Provision Comments

Parking requirements for the future proposed development have been assessed as per the following parking rates specified in Part B7 of Randwick Council's Development Control Plan 2013.

FOR MULTI-DWELLING HOUSING AND RESIDENTIAL FLAT BUILDINGS:

- 1 space per 2 studio units
- 1 space per 1 bedroom unit
- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Existing Situation

The existing development comprises of 1 x 1 bedroom and 2 x 3 bedroom units. This is based on information provided in the pre-lodgment meeting as the plans are unclear. This will generate a parking demand of 3.6 (say 4) spaces when assessed against the above DCP rate. As 3 spaces

are currently provided, there is an existing parking shortfall of 0.6 (1) space. This can be considered as a parking credit for the proposed development

Proposed Development

The completed development will comprise of 1 x 1 bedroom, and 3 x 2 bedroom units.

Parking required = 1.0 + (3 x 1.2) + 1 visitor
 = 1.0 + 3.6 + 1
 = 5.6 spaces
 = say 6 spaces

Parking provided = 3 spaces

Parking Shortfall = 3 spaces

Application of 1 space credit

Revised Parking shortfall = 2 spaces

The proposed development will therefore result in an increase in parking demand of 2 spaces above the existing situation. This includes a 1 space requirement for visitor parking which is now triggered as the proposed development comprises 4 dwellings.

As no additional off-street parking is proposed, the development will be relying on the availability of on-street parking and other measures to minimise the parking demand.

The shortfall is generally not supported as the site is located within an area that experiences very high demand for on-street parking due to its proximity to Clovelly Beach and is often parked to capacity, especially during the summer months.

The submitted Traffic impact statement by Traffix attempts to justify the parking shortfall by highlighting the geometric constraints of the site and the sites proximity to bus stop which include regular and frequent services to Bondi Junction, Central station and the City.

The proximity to public transport is acknowledged however concerns remain on the shortfall. Should the assessing officer consider approving the application then it is recommended that;

- conditions be included that prohibit the issuing of future parking permits for residents to actively discourage vehicle ownership.
- Adequate bike storage large enough to accommodate 3 spaces be provided

As long as these measure are included in the consent no objections are raised to the parking shortfall. Suitable conditions have been included in this report.

Parking Layout Comments

The 3 carspaces will be able to comply with the minimum requirements of As 2890.1 in regards to length , width and adjacent aisle width. The Carspace closest to the western edge of the site may require an additional point turn to access due to the restricted turning circle to enter/exit from the Right of Way

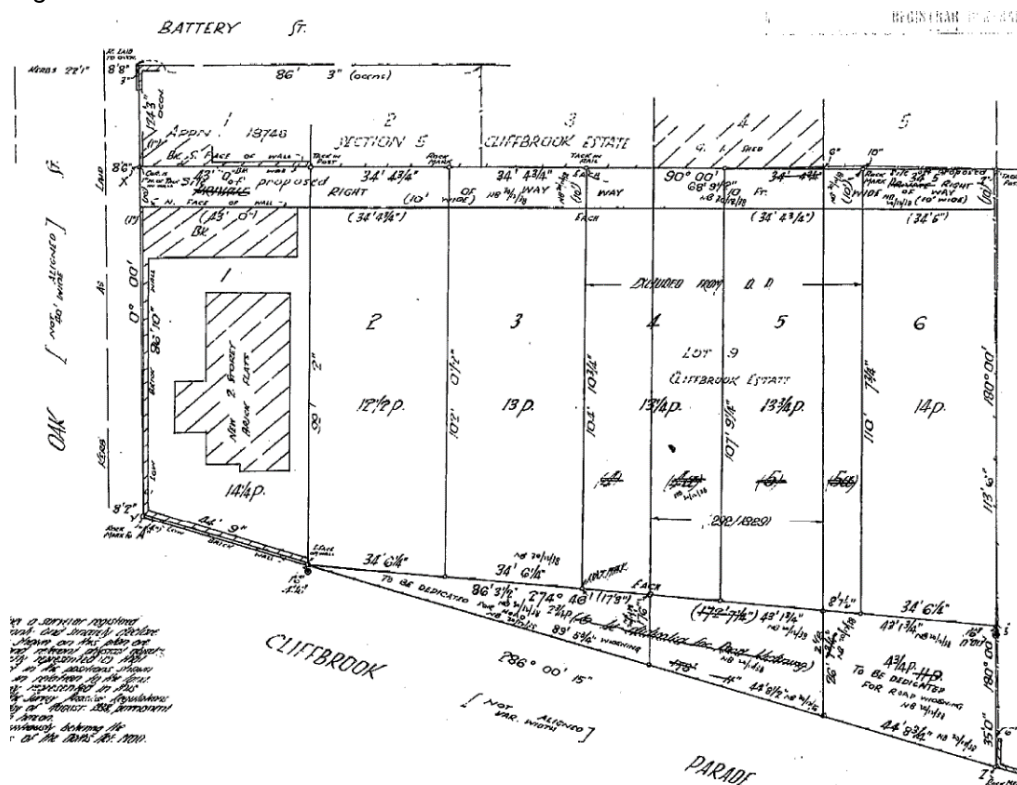
Parking Allocation Comments

It is recommended the 3 carspaces be allocated to Units 2, 3, & new unit 4. The existing one-bedroom unit on the lower ground floor generates the lowest parking demand and so is recommended not to have a carspace.

Right of Way Comments

The site is known as Lot 6 in DP 18601 and is benefitted by an existing 3.05m (10ft) wide Right of Way at the rear which will serve as the vehicle access to the property. The Right of way also burdens and benefits the neighbouring properties to the west at 14-22 Cliffbrook Parade and is accessed from Oak Street (see DP 18601 below).

Figure 1 - DP 18601



This will also be the main access to the subject property during construction and the Right of Way must be kept clear at all times to ensure access into the neighbouring properties at 14-22 Cliffbrook Parade is not impacted during works, being consistent with the terms of the Right of Way, unless explicit permission has been obtained from property owners and interested parties to the Right of Way.

Drainage Comments

Stormwater runoff from the (redeveloped portion) site shall be discharged either:

- a) To Gordons Bay Reserve via a suitable discharge point OR

Undergrounding of power lines to site

At the ordinary Council meeting on the 27th May 2014 it was resolved that:

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

The subject is/is not located within 15m of a power pole on the same side of the street hence the above clause is/ is not applicable. A suitable condition has been included in this report.; OR

If additions are at rear consider following wording

It is noted that the proposed works are located towards the rear and there are no alterations or additions proposed at the front of the dwelling where the existing electricity supply connects. It is therefore considered a nexus cannot be established between the council resolution and the proposed works and subsequently the condition has not been recommended in this instance.

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

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application that seeks alterations and additions to an existing residential flat building, comprising minor internal demolition, refurbishment, and reconfiguration to existing units, plus a new Level 3 containing a two-bedroom apartment, at Lot 6 in DP18601, commonly known as No. 24 Cliffbrook Parade, Clovelly 2013.

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

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the RLEP2012 - maximum FSR of 0.9:1, demonstrated on the LEP map in Figure 1 below.

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- (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 RLEP2012 - maximum FSR of 0.9:1, demonstrated on the LEP map in Figure 1 below.

The proposed FSR is a variation from the maximum permitted, with the proposal for 1.038:1, being a 15.3% variation from the numerical development standard, pursuant to Clause 4.4 of the RLEP2012.



Figure 1: FSR Map

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 proposal complies with the objectives of the development standard and the R3 Medium Density Residential zone, indicated in the assessment at Table 1 below. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for the development within the zone.
- In this regard, the FSR of the existing building form is a variation from the development standard, with an existing FSR of 0.917:1, being an exceedance of 6.06m² and a 1.7% variation from the development standard.
- Notwithstanding the numeric departure, the proposed alterations and additions will have a height, bulk, and scale compatible with the scale of the existing built form and that of the surrounding local area, and the FSR non-compliance will not have an adverse impact to surrounding properties and the streetscape in relation to significant additional overshadowing, visual impact from the bulk and scale, visual or acoustic privacy impacts, or view loss. Furthermore, the proposed alterations and additions and the associated FSR variation will contribute to the provision of high-quality internal amenity to the existing units.

The proposed FSR is a variation from the maximum permitted, with the proposal for 1.038:1, being a 15.3% variation from the numerical development standard, pursuant to Clause 4.4 of the RLEP2012.



Figure 1: FSR Map

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- Notwithstanding the numeric departure, the proposed alterations and additions will have a height, bulk, and scale compatible with the scale of the existing built form and that of the surrounding local area, and the FSR non-compliance will not have an adverse impact to surrounding properties and the streetscape in relation to significant additional overshadowing, visual impact from the bulk and scale, visual or acoustic privacy impacts, or view loss. Furthermore, the proposed alterations and additions and the associated FSR variation will contribute to the provision of high-quality internal amenity to the existing units.

Visual Bulk and Scale

- As illustrated in External Views and Streetscape Elevation excerpts at Figures 2 & 3, the proposed alterations and additions are contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed FSR variation does not generate an overdevelopment of the site, or a development with an FSR expressed as bulk and scale that is not compatible with the context in which it is located.



Figure 2: Excerpt Streetscape Elevation (south) illustrating compatibility with the surrounding local medium density context



Figure 3: Excerpt External Views illustrating compatibility with the local context, including adjoining No. 22 Cliffbrook Parade (DA885/2016).

- Views from the foreshore areas and Cliffbrook Parade pedestrian walkway will be of a built form that is compatible with neighbours (Figure 2).

- To the west of the subject site at No. 18 Cliffbrook Parade is located a multi-unit housing development with recent consent and construction of alteration and additions including new upper level (DA/601/2012), approved with a 33.3% FSR variation (Figure 4).

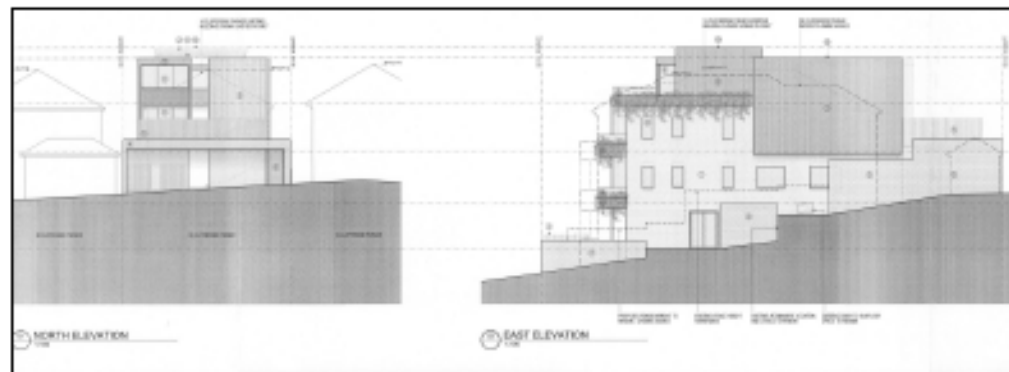


Figure 4: Excerpt of approved elevations to No. 18 Cliffbrook Parade (DA/601/2012)

- On the adjoining lot to the west of the subject site at No. 22 Cliffbrook Parade is located a three-storey brick with tiled roof residential flat building. This site has the benefit of a recently approved alterations and additions including a new upper level containing a two-bedroom unit. This development included a variation the FSR (7.56%) development standard, and wall height control (DA885/2016) (Figure 5).

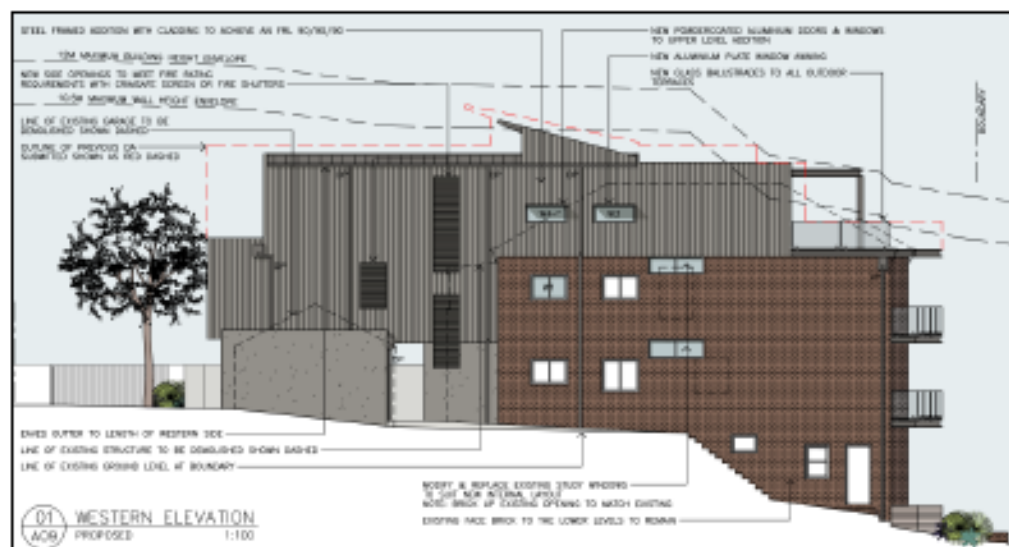


Figure 5: Excerpt of western elevation of approved alterations and additions at No. 22 Cliffbrook Parade (DA885/2016)

- The consistency with the FSR of recently approved developments is demonstrated in the following table:

Table 1: Recently Approved FSR

Address	Development Consent	FSR	GFA Exceedance	Variation
Subject Site	Proposed	1.038:1	49.2m ²	15.3%
22 Cliffbrook Parade	DA/601/2012	0.988:1	23.7m ²	7.56%
18 Cliffbrook Parade	DA885/2016	1.2:1	99.0m ²	33.3%

- Compliance with established front building alignments, plus side and rear setbacks, ensures the proposed additional floor space provides a good level of building separation, access, landscaping, privacy, plus natural lighting and ventilation for both the new development and adjoining properties.

Articulation and Design Measures Which Reduce the Apparent Bulk of the Building and the Associated FSR Variation

- The proposal has been designed to have a variety of features including indentation and recesses and steps in the floor levels, privacy screens, plus landscape planters with the variation providing suitable articulation to the built form and building façade. Furthermore, a range of materials and finishes are proposed to be incorporated to provide visual interest and character to the development so as to reduce the visual bulk of the built form when viewed from surrounding properties and the streetscape (Figures 2 & 3).
- The modest shallow pitch gabled roof nature of the roof design is consistent with numerous RFB in the local area, and provides for a reduced visual bulk and scale impact, and compliant maximum building height, as the roof form balances with the sloping site. In this regard, the proposal is for a maximum roof RL height (RL41.55) representing a minor 1.75m height increase on the existing ridge height (RL39.8).
- A range of materials and finishes are proposed to be incorporated to provide visual interest and character to the development so as to reduce the visual bulk of the built form when viewed from surrounding properties and the streetscape. The materials, design and finishes will sit comfortably in the surrounding context with the colour palette appropriate will not detract from the scenic qualities of the foreshore location. The mix of materials which include rendered brick, anodised aluminium windows, off form concrete, glass balustrades, and timber look metal battens provide an interesting presentation and variation contributing to the streetscape character and foreshore setting.

Overshadowing

- The FSR non-compliance will not result in adverse amenity impacts to neighbouring properties in regards to overshadowing. Given the lot orientation, some additional overshadowing of the adjoining lots to the east and west associated with the proposed Level 3 is expected. However, shadow diagrams accompanying this application indicate that the overshadowing impact is not significant, with two (2) hours of sunlight maintained to north facing living areas and private open space of the adjoining dwellings to the east and west. In regard to overshadowing, the shadows cast are within a built form that is compliant with the height limit development standard and wall height control, with retained existing setbacks, recessed Level 3, plus a and a modest shallow pitch gable roof, and are therefore anticipated by the controls, and are consistent with the medium-density context of the surrounding local area.

Visual and Acoustic Privacy

- Visual and acoustic privacy impacts to adjoining neighbours have been carefully considered, with the reconfiguration of living rooms of apartments oriented to the front and rear of the site, while windows to Unit 4 side elevations are fitted with screening louvers, and retained side setbacks confirm good separation distance exists between adjoining neighbours. In this regard the amended design has increased the side setback to the southern boundary of the Level 3 addition mitigating adverse impact of the additional FSR.

- The proposal has been designed and sited to ensure adequate visual and acoustic privacy between the subject site and the adjoining residential developments, and the public domain. New windows and balconies have been appropriately sited, and designed with privacy screens to provide access to sunlight, minimise potential overlooking, while providing opportunities for passive surveillance of the street, with it noted that the flat building having existing side facing balconies on Levels 1 (Ground Floor) and Level 2 and adjoining neighbours have side facing windows. (Figures 6 & 7).
- Balconies, terraces, and courtyards provide opportunities for passive surveillance of Cliffbrook Parade, provided with privacy screens to retain privacy, while landscape planter boxes to Unit 3 and 4 terrace and courtyard mitigates downward overlooking (Figure 6).

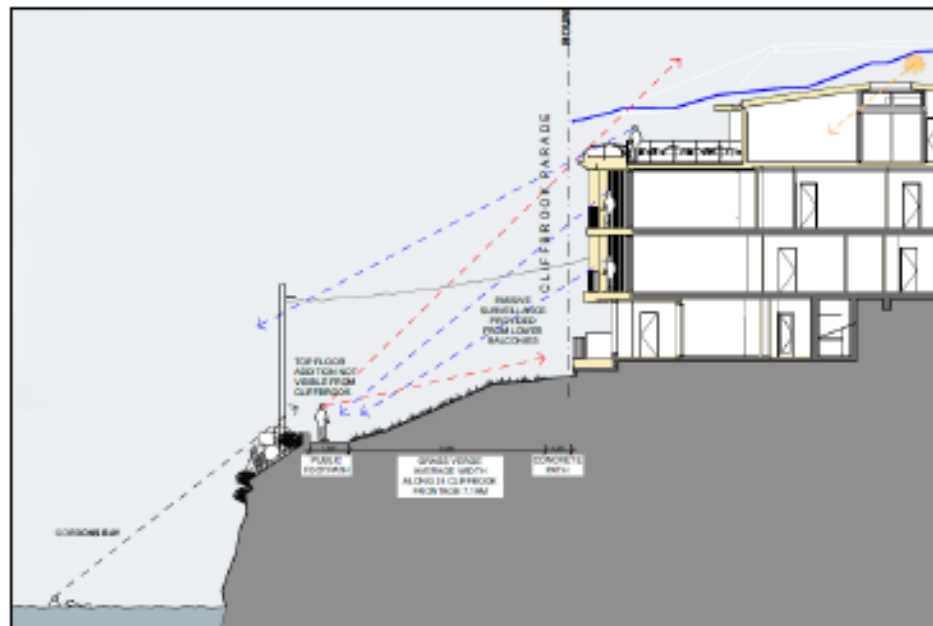


Figure 6: Excerpt Long Section illustrating overlooking mitigation from recessed Unit 4 terrace, provided with landscape planters

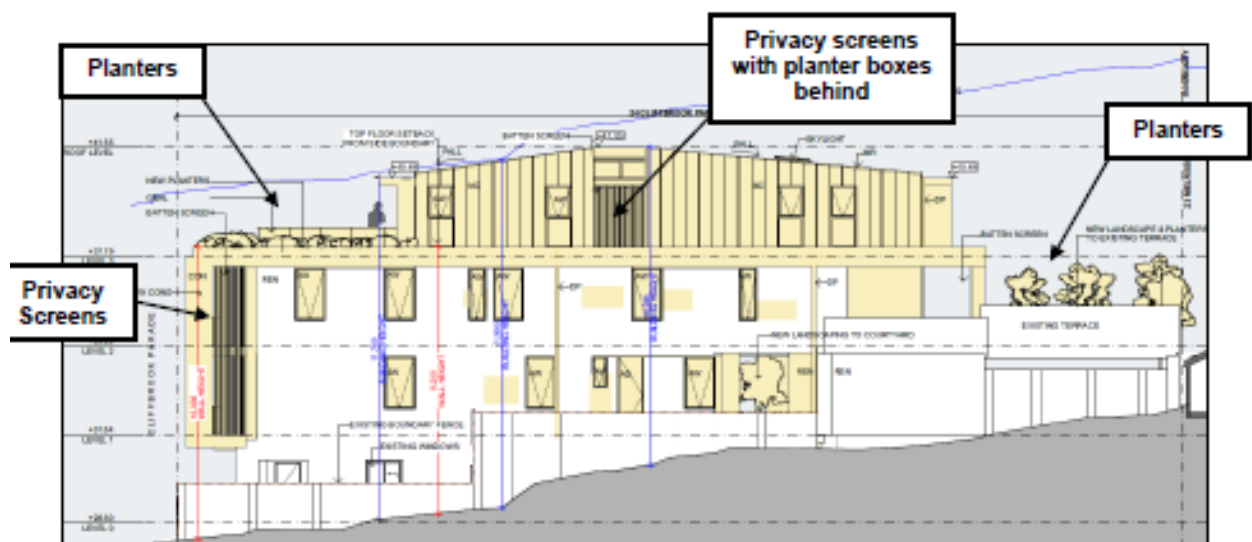


Figure 7: Excerpt East Elevation, illustrating overlooking mitigation from recessed Unit 4 terrace and courtyard, plus Unit 3 terrace, provided with landscape planters and balconies provided with privacy screens

- Adequate retained building separation to adjoining neighbours further mitigates impacts to privacy amenity from balconies, with it considered that the proposal is compatible with the surrounding context as illustrated in Figures 8 & 9.



Figure 8: Illustrating privacy context with adjoining neighbour to the west

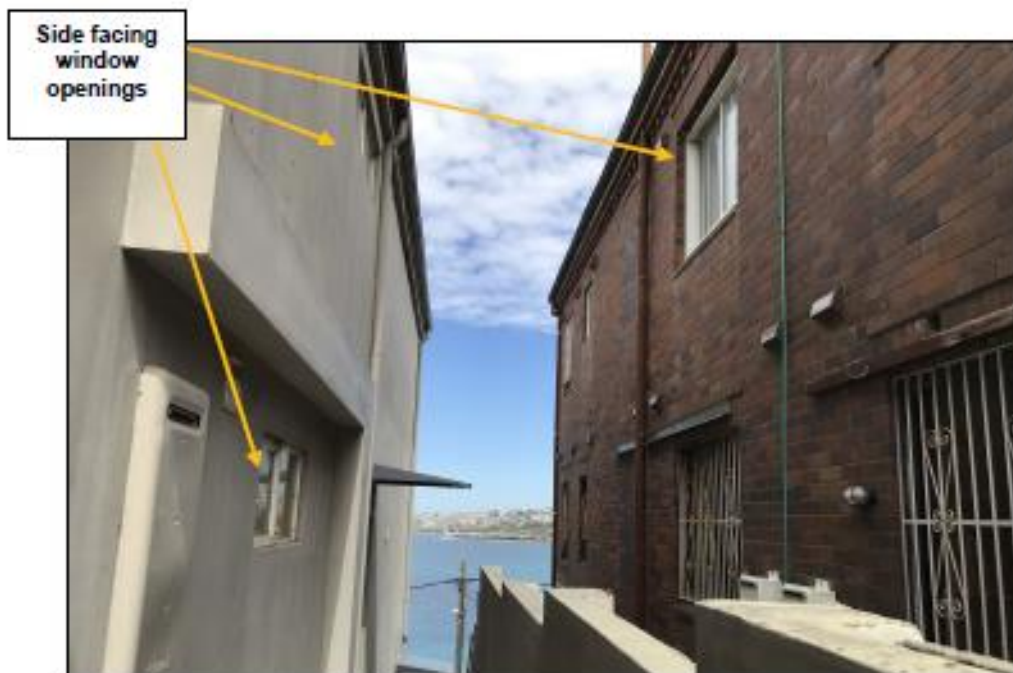


Figure 9: Illustrating privacy context with adjoining neighbour to the east

View Impacts

- Given the steep topography of the subject site and surrounding landscape, plus retained building separation, in addition to the modest shallow pitch gabled roof, no significant views are affected by the proposed FSR variation.

- With regard to view loss from the proposed bulk and scale to neighbouring residential development to the north of the subject site, a view analysis indicates that the view loss is not significant with views beyond the subject site to Gordons Bay and Wedding Cake Island are largely retained.
- A view analysis was prepared for the assessment of this proposal, with the impact to views from the subject development proposed upper level considered to be consistent with the approved development at No. 22 Cliffbrook Parade (DA885/2016). In this regard, while it is acknowledged that there will be some minor view loss, substantial high value views are retained from these properties. In addition, in terms of compliance with the applicable standards and provisions in the RLEP2012 and the RDCP2013, the non-compliances will not materially be responsible for the view loss. The view impact of the proposed upper level addition is illustrated in Figures 10, 11, & 12.



Figure 10: View impact to ground floor of adjoining lot to the rear the subject site



Figure 11: View impact to first floor of adjoining lot to the rear the subject site



Figure 12: View impact to second floor of adjoining lot to the rear the subject site

Amenity

- The alterations and additions to the residential flat building represents a high-quality design, will achieve a high-level of internal amenity for the existing units, with the proposed internal layout of apartments exhibiting good compliance with the provisions of SEPP65 and the accompanying ADG, particularly for private open space, natural cross-ventilation, unit sizes, internal configuration, and storage.
- The existing residential flat building has a north-south orientation in accordance with the orientation of the site. Notwithstanding the site orientation, the open plan nature of the combined living areas, plus proposed window openings to the eastern side elevations, windows to the stairwell void, plus windows to Unit 4 east facing recessed courtyard, in addition to skylight to Unit 4, optimises solar access and cross ventilation, while reducing energy use for heating, lighting, and cooling.
- The proposed Unit 4 complies with solar access provision to living area and private open space, as does the existing Unit 3, with a total of 50% of units complying with the ADG by receiving two (2) hours of solar access to private open space areas between 9 am and 3 pm on June 21. In this regard, the proposed internal reconfiguration, with large, glazed south facing openings adjoining balconies seeks to incorporate additional to daylight into units, while providing improved outlook to the coast.
- Compliance with established front and rear building alignments, plus side setbacks, ensures the proposed additional floor space provides a good level of building separation, access, landscaping, privacy, plus natural lighting and ventilation for both the new development and adjoining properties.
- A high level of amenity is achieved through the internal reconfiguration to existing units, plus new two-bedroom unit, all being proposed with open plan combined kitchen, dining, and living rooms, with directly accessible south facing balcony or terrace private open space areas overlooking Gordons Bay and Wedding Cake Island.
- The site is conveniently located to public transport including regular bus services located on Clovelly Road 350m walking distance northeast of the subject.
- The provision of a new area high-quality landscaped area within the lobby will contribute to the landscaped character and amenity of the development.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Table 2: Assessment against the Objectives of the Development Standard and Land Use zone.

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
4.4 <i>(1)(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,</i>	Complies <ul style="list-style-type: none"> • Pursuant to Clause 4.4 of the RLEP2012, the site is subject to a maximum FSR of 0.9:1, with the proposal is for an FSR of 1.038:1, being a 15.3% variation from the numerical development standard. • As illustrated in External Views and Streetscape Elevation excerpts at Figures 2 & 3, the proposed alterations and additions are contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed development does not represent an overdevelopment of the site, or a development with an FSR expressed as bulk and

	<p>scale that is not compatible with the context in which it is located.</p> <ul style="list-style-type: none"> To the west of the subject site at No. 18 Cliffbrook Parade is located a multi-unit housing development with recent consent and construction of alteration and additions including new upper level (DA/601/2012), approved with a 33.3% FSR variation. On the adjoining lot to the west of the subject site at No. 22 Cliffbrook Parade is located a three-storey brick with tiled roof residential flat building. This site has the benefit of a recently approved alterations and additions including a new upper level containing a two-bedroom unit. This development included a variation the FSR (7.56%) development standard, and wall height control (DA885/2016). The proposal is compliant with the height development standard and wall height control. The proposed development represents a high degree of compliance with the predominant LEP and DCP building envelope controls which therefore demonstrates that the FSR can be supported on the site and that strict compliance with the development standard is unreasonable or unnecessary. Despite the FSR variation, the proposed Unit 4 provides for north facing windows and private open space for good access to sunlight, while the building depth allows for good cross ventilation through the unit.
4.4 (1)(b) to ensure that buildings are well articulated and respond to environmental and energy needs	<p>Complies</p> <ul style="list-style-type: none"> All facades to the built form are highly articulated, with provision of new balconies, terrace, and courtyard plus indentations to the frontages, recessed Level 3, and new window fenestration providing improved integration and articulation to the building faced, contributing to breaking down the scale of the built form on the subject site. Additional articulation is provided to the side elevations with proposed privacy screens, and recessed upper-level courtyard with landscape planter box that allows for solar access and cross ventilation while maintaining privacy amenity. The height, bulk, and scale, along with the colours, materials and finishes are appropriate for the foreshore area, as the proposed RFB will sit comfortably amongst the established streetscape, with no impact to the foreshore setting expected.
4.4 (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.	<p>Complies</p> <ul style="list-style-type: none"> The approved residential flat building is not heritage listed, and the subject site is not located within proximity of a heritage item, and is not located within a heritage conservation area.
4.4 (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.	<p>Complies</p> <ul style="list-style-type: none"> The proposal's impact to visual bulk, loss of privacy, overshadowing and views has been comprehensively assessed above.

Consistency with the objectives of the R3 Medium Density Zone	
Objectives	Assessment
<ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area. • To protect the amenity of residents. • To encourage housing affordability. • To enable small-scale business uses in existing commercial buildings. 	<p>Complies</p> <ul style="list-style-type: none"> • The proposed alterations and additions with refurbishment of an outdated RFB to provide an improved level of internal and external amenity, plus the provision of an additional unit is considered to be consistent with the objectives of the zone which seek to provide for the housing needs of the community within a medium density residential context. • A high level of amenity is achieved through the internal reconfiguration to existing units, plus new two-bedroom unit, all being proposed with open plan combined kitchen, dining, and living rooms, with directly accessible south facing balcony or terrace private open space areas overlooking Gordons Bay and Wedding Cake Island. • The proposed new Unit 4 will improve the stock and range of housing available in the locality with a mix of rejuvenated one and two-bedroom units, contributing to improved housing choice and affordability. <p>The proposed FSR variation is therefore not considered to generate any inconsistency with the zone objectives.</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: The points outlined in relation to unreasonable and unnecessary also constitute environmental planning grounds. It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which include:

- The proposed alterations and additions will have a height, bulk, and scale compatible with the scale of the existing built form and that of the surrounding local area, and the FSR non-compliance will not have an adverse impact to surrounding properties and the streetscape in relation to significant additional overshadowing, visual impact from the bulk and scale, visual or acoustic privacy impacts, or view loss. Furthermore, the proposed alterations and additions provide for high-quality internal amenity to the existing units.
- The recessed nature of the addition beyond that required by the side setback provisions and being recessed from the front and rear minimises the apparent bulk of the built form when viewed from the streetscape and when viewed from neighbouring properties. The proposed variation is therefore not responsible for any visual bulk impacts to neighbouring properties or to the streetscape.
- As illustrated in External Views and Streetscape Elevation excerpts at Figures 2 & 3, the proposed alterations and additions are contained within a building envelope that is compatible with the established built form of the surrounding area. It is therefore considered that the proposed FSR variation does not generate an overdevelopment of the site, or a development with an FSR expressed as bulk and scale that is not compatible with the context in which it is located.

- The modest shallow pitch gabled roof nature of the roof design is consistent with numerous RFB in the local area, and provides for a reduced visual bulk and scale impact, and compliant maximum building height, as the roof form balances with the sloping site. In this regard, the proposal is for a maximum roof RL height (RL41.55) representing a minor 1.75m height increase on the existing ridge height (RL39.8).
- The proposal has been designed to have a variety of features including indentation and recesses and steps in the floor levels, privacy screens, plus landscape planters with the variation providing suitable articulation to the built form and building façade. Furthermore, a range of materials and finishes are proposed to be incorporated to provide visual interest and character to the development so as to reduce the visual bulk of the built form when viewed from surrounding properties and the streetscape (Figures 2 & 3).
- The FSR non-compliance will not result in adverse amenity impacts to neighbouring properties in regards to overshadowing. Given the lot orientation, some additional overshadowing of the adjoining lots to the east and west associated with the proposed Level 3 is expected. However, shadow diagrams accompanying this application indicate that the overshadowing impact is not significant, with two (2) hours of sunlight maintained to north facing living areas and private open space of the adjoining dwellings to the east and west. In regard to overshadowing, the shadows cast are within a built form that is compliant with the height limit development standard and wall height control, with retained existing setbacks, recessed Level 3, plus a and a modest shallow pitch gable roof, and are therefore anticipated by the controls, and are consistent with the medium-density context of the surrounding local area.
- The proposal has been designed and sited to ensure adequate visual and acoustic privacy between the subject site and the adjoining residential developments, and the public domain. New windows and balconies have been appropriately sited, and designed with privacy screens to provide access to sunlight, minimise potential overlooking, while providing opportunities for passive surveillance of the street, with it noted that the flat building having existing side facing balconies on Levels 1 (Ground Floor) and Level 2 and adjoining neighbours have side facing windows. (Figures 6 & 7).
- Balconies, terraces, and courtyards provide opportunities for passive surveillance of Cliffbrook Parade, provided with privacy screens to retain privacy, while landscape planter boxes to Unit 3 and 4 terrace and courtyard mitigates downward overlooking (Figure 6).
- A view analysis was prepared for the assessment of this proposal, with the impact to views from the subject development proposed upper level considered to be consistent with the approved development at No. 22 Cliffbrook Parade (DA885/2016). In this regard, while it is acknowledged that there will be some minor view loss, substantial high value views are retained from these properties. In addition, in terms of compliance with the applicable standards and provisions in the RLEP2012 and the RDCP2013, the non-compliances will not materially be responsible for the view loss. The view impact of the proposed upper level addition is illustrated in Figures 10, 11, & 12.
- Views from the foreshore areas and Cliffbrook Parade pedestrian walkway will be of a built form that is compatible with neighbours (Figure 2).

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 FSR standard and the R3 Medium Density 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.

The development is in the public interest given the proposed FSR variation allows for the provision of three (3) rejuvenated units and one (1) new unit, comprising 1 x one-bedroom units, 3 x two-bedroom apartments, including 1 x liveable unit, all with excellent internal amenity, in an accessible location, being in close proximity to public transport and local services.

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 FSR 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 18-003 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 limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

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

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at No. 24 Cliffbrook Parade, and is requested to be looked upon favourably by the consent authority.

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Appendix 3: SEPP 65 Compliance Table

Clause	Design Criteria	Proposal	Compliance												
Part 3: Siting the Development															
3D-1	Communal and Public Open Space														
	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 89m2 required	12m² entry courtyard at Level 1 Poor amenity, adjacent to air conditioning units and adjoins a private balcony	No												
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	Located on the southern side of the building and will not receive sunlight.	No												
3E-1															
	Deep soil zones are to meet the following requirements: Site Area: <table><tr><th>Site Area</th><th>Min. Dimension</th><th>Deep Soil Zone (% site)</th></tr><tr><td>< 650m²</td><td>-</td><td>7%</td></tr><tr><td>650–1,500m²</td><td>3m</td><td>7%</td></tr><tr><td>>1,500m²</td><td>6m</td><td>7%</td></tr></table>	Site Area	Min. Dimension	Deep Soil Zone (% site)	< 650m²	-	7%	650–1,500m²	3m	7%	>1,500m²	6m	7%	None provided – no change to existing	No
Site Area	Min. Dimension	Deep Soil Zone (% site)													
< 650m²	-	7%													
650–1,500m²	3m	7%													
>1,500m²	6m	7%													
3F-1	Visual Privacy														
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2) Gallery access circulation should be treated as habitable space when	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Level 1 and 2 existing and no change Proposed Level 3 will have a 3m separation to the RFB to the west	No, acceptable based on the site constraints
Building Height	Habitable Rooms and Balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													

Clause	Design Criteria	Proposal	Compliance
	measuring privacy separation distances between neighbouring properties		
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid Winter.	<p>The living areas are orientated to the south and will not receive a minimum 2 hours direct sunlight – existing for ground and Level 1</p> <p>Level 2 kitchen/living area relocated to south but secondary living area and courtyard proposed to northern side</p> <p>Proposed Level 3 living area orientated to the south</p>	No, acceptable based on the site constraints
4B	Natural Ventilation		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	All units will receive natural cross ventilation	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired</p>	<p>2.75m</p> <p>SEE states- <i>Proposed Level 3 Unit 4 minimum 2.5m, with significant portion of Unit 4 at least 2.7m, with a minor 8% of the floor area below 2.7m with the raked ceiling having a maximum ceiling height of 3.35m.</i></p>	Yes
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m² 	<p>Unit 1 ground 1bed = 50m²</p> <p>Unit 2 level 1 2 bed + study = 96m²</p> <p>Unit 3 level 2</p>	Yes

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Clause	Design Criteria	Proposal	Compliance															
	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each</p>	<p>2 bed + study = 124m²</p> <p>Unit 4 level 3 2 bed = 78m²</p>																
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms		Yes															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height		Yes															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window		Yes															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)		Yes															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)		Yes															
	Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments		Yes															
4E	Apartment Size and Layout																	
	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m	<p>Ground Floor Unit 1 1bed = 27m² min 2m</p> <p>Level 1 Unit 2 2 bed + study = 12m² min 2m</p> <p>Level 2 Unit 3 2 bed + study = 12m² + 64m² min 2m</p> <p>Level 3 Unit 4 2 bed = 25m² min 2m</p>	Yes
Dwelling type	Minimum area	Minimum depth																
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m ²	2m																
3+ bedroom	12 m ²	2.4m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m	Ground level apartment is 27m ²	Yes															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight		Yes															
4G	Storage																	
	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Storage is not provided in apartment in addition	No															

Clause	Design Criteria	Proposal	Compliance
	<ul style="list-style-type: none"> Studio apartments - 4m³ 1 bedroom apartments - 6m³ 2 bedroom apartments - 8m³ 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment</p>	to kitchens, bathrooms and bedrooms	

Appendix 4: RDCP 2013 Compliance Table

3.1 Section B6: Recycling and Waste Management

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
4.	On-Going Operation		
	(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.	A central waste storage area will be provided at Level 1.	Yes

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3.	Parking & Service Delivery Requirements		
	Car parking requirements: <ul style="list-style-type: none"> 1 space per 2 studios 1 space per 1-bedroom unit (over 40m²) 1.2 spaces per 2-bedroom unit 1.5 spaces per 3 or more bedroom unit 1 visitor space per 4 dwellings 	The proposed development generates a demand for 6 car spaces on the site. 3 car spaces are currently provided and 1 credit applies so the shortfall equates to 2 car spaces. Note the studios are 2.5m x 3m and could be used as bedrooms which would affect parking Council's Development Engineer does not support the shortfall due to high demand in parking in the surrounding streets.	No
4.	Bicycles		
	Residents: <ul style="list-style-type: none"> 1 bike space per 2 units Visitors: <ul style="list-style-type: none"> 1 per 10 units 	Nil	No

3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (356.6m ²) is to be landscaped open space.	55m ² of landscaped area, contained within planter boxes on the terraces and courtyards. The non-compliance is acceptable given the existing building constraints.	No
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (356.6m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Nil The non-compliance is acceptable given the existing building constraints.	No
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.		No
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.		No
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.		No
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.		No
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	All apartments will have direct access from the living area to a balcony or terrace.	Yes
	For residential flat buildings:	All dwellings will have private courtyard/terrace	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling.</p> <p>(vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m.</p>	or balcony with a minimum area of 8m ² .	
2.3.2	Communal open space		
	<p>Communal open space for residential flat buildings is to be:</p> <p>(a) Of a sufficient contiguous area, and not divided up for allocation to individual units.</p> <p>(b) Designed for passive surveillance.</p> <p>(c) Well oriented with a preferred northerly aspect to maximise solar access.</p> <p>(d) adequately landscaped for privacy screening and visual amenity.</p> <p>(e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.</p>	A 12m ² common courtyard will be provided at Level 1. The common courtyard will have poor amenity due to lack of solar access, adjacent to air conditioning units and adjoins private balcony.	No
3.	Building Envelope		
3.1	Floor space ratio		
	0.9:1	1.04:1 Refer to the Key Issues Section of this report.	No
3.2	Building height		
	12m	12.94m Refer to Section 6.5 of this report.	No
3.3	Building depth		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	The proposed apartment at Level 3 will be 14.6m in depth.	No
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street.</p> <p>Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances</p>	<p>There will be no change to the ground floor nil setback to the boundary.</p> <p>The new upper level balconies reduce the front setback at Levels 1 and 2 and the building</p>	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>protrudes forward of buildings to the west.</p> <p>The building to the east is a single dwelling and an anomaly.</p> <p>The setback therefore, should be consistent with the prevailing setback to the west, and in this regard the balconies may need to be set within the envelope of the building, subject to a setback analysis.</p>	
3.4.2	Side setback		
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 14m ≤ site frontage width < 16m: 2.5m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>	<p>Lot width is less than 12m - merit assessment</p> <p>Proposed addition at Level 3</p> <ul style="list-style-type: none"> • 1.4m (west) • 1.5-2m (east) <p>The proposed side setbacks to the upper level are not supported, noting the wall height and length variations proposed, and an increased side setback is necessary to help break up the massing of the upper floor and to improve articulation and reduce view impacts.</p>	No
3.4.3	Rear setback		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (34.6m) or 5m, whichever is the greater.	Level 3 5.873m	Yes
4. Building Design			
4.1	Building façade		
	(i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs.	Wall length <ul style="list-style-type: none"> 15m (east) 13m (west) 	No
4.2	Roof design		
	(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. (v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.	The roof design adds to the excessive bulk and scale of the proposed addition at Level 3.	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. 	No habitable roof space is proposed.	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	- Submit computer generated perspectives or photomontages showing the front and rear elevations of the development.		
4.4	External wall height and ceiling height		
	(ii) Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies	12m (east elevation) The non-compliance with the external wall height will result in adverse visual impacts and additional overshadowing to the adjoining properties.	No
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Acceptable	Yes
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Clear delineation is provided between pedestrian and vehicular access.	Yes
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 	Acceptable	Yes
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms	The apartment layout and design maximises daylight penetration and natural ventilation.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	and limiting the use of borrowed light and ventilation.		
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Acceptable	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Acceptable	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Acceptable	Yes
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	A primary balcony will be provided for all apartments in accordance with the minimum area requirements.	Yes
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace.	The ground floor apartment will have direct access to a terrace with an area of 27m ² .	Yes
4.9	Colours, materials and finishes		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices 	The proposed materials and colours are appropriate for the coastal environment.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		
5.	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	The new apartment is orientated to the south. However, it will achieve appropriate solar access and amenity for future occupants.	Yes
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	As above	Yes
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.		Yes
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		Yes
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	The site has a north to south orientation and the proposed development will overshadow the adjoining properties to the east and west. The overshadowing impacts to the adjoining properties at the winter solstice are considered below. <i>22 Cliffbrook</i> <ul style="list-style-type: none"> • 8:00am - additional shadow cast to at least 50% window kitchen and wintergraden at top floor 	Yes
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		<ul style="list-style-type: none"> 9:00am - additional shadow to Level 3 windows 10:00am – additional shadow cast to Level 3 windows 11:00am - no additional overshadowing Midday – the building overshadows itself <p><i>2 Thorpe Street</i></p> <ul style="list-style-type: none"> No overshadowing north facing windows Minor additional shadow roof of rear extension <p><i>26 Cliffbrook Parade</i></p> <ul style="list-style-type: none"> No overshadowing north facing windows at 26 Cliffbrook Minor additional shadow roof of rear extension <p>The proposal is not likely to result in any unreasonable overshadowing impacts to the adjoining properties.</p> <p>Notwithstanding, a considered design approach involving a smaller footprint and increased setbacks would assist in reducing the additional overshadowing generated by the proposed addition at Level 3.</p>	
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	The design and layout of the proposed apartment addition at Level 3 will provide good daylight and natural ventilation for the future occupants.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Noted	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Noted	Yes
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.	All rooms to the new apartment at level 3 will receive natural ventilation.	Yes
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.	As above	Yes
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	The southern window opening to the new apartment will provide adequate natural ventilation to the kitchen.	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.		Yes
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away 	The proposed apartment at Level 3 incorporates a 30m ² open terrace adjoining the living room that would result in potential privacy impacts to the adjoining properties. In order to mitigate these potential privacy impacts, privacy screens would need to be installed along the side elevations which would have an adverse visual impact within the foreshore area.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>from the private open space or windows of the adjacent dwellings</p> <ul style="list-style-type: none"> - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	<p>The proposed terrace adjoining the living area at Level 3 could accommodate large groups of people and result in adverse acoustic impacts to the adjoining properties.</p>	No
5.5	View sharing		
	<ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. 	<p>Refer to the Key Issues section of this report.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.		
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Direct, obvious and secure access to and within the development will be provided.	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.		Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Acceptable	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	Acceptable	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Acceptable	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Acceptable	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Acceptable	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Acceptable	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Acceptable	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Acceptable	Yes
6.	Car parking and access		
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	There will be no change to the existing carparking arrangement on the site.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	Acceptable	Yes
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	Acceptable	Yes
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	Acceptable	Yes
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.	Acceptable	Yes
7.6	Storage		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m3 (b) 1-bedroom apartments – 6m3 (c) 2-bedroom apartments – 8m3 (d) 3 plus bedroom apartments – 10m3	The architectural plans do not show storage in addition to kitchen cupboards and bedroom wardrobes.	No
7.7	Laundry facilities		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	There is no scope to provide drying facilities on the site due to existing building constraints.	No
	(ii) Provide internal laundry for each dwelling unit.	Acceptable	Yes
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.		No
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. 	Air conditioning units will be installed within the common courtyard at Level 1	Yes

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Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/501/2021

Development Application Report No. D81/22

Subject: 55 Denning Street, South Coogee (DA/782/2021)

Executive Summary

Proposal:	Amended plans received: Revision of upper level addition including reduction of front setback and minor height increase. Original description: Alterations and additions to existing dwelling, comprising internal demolition, refurbishment and reconfiguration, plus a new Level.
Ward:	East Ward
Applicant:	Studio Johnston
Owner:	Derek Hill
Cost of works:	\$1,442,718
Reason for referral:	More than ten (10) unique submissions by way of objection were received

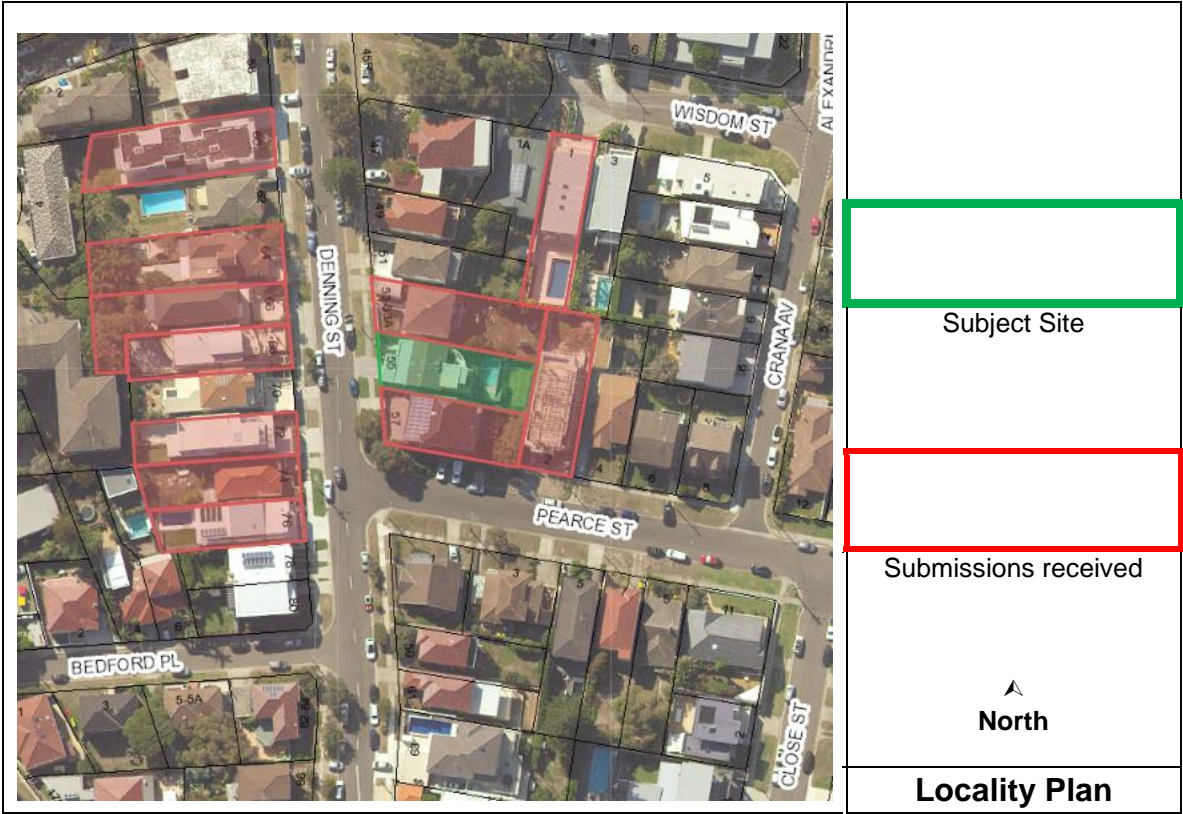
Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/782/2021 for alterations and additions to existing dwelling, comprising internal demolition, refurbishment and reconfiguration, plus a new Level, at No. 55 Denning Street, South Coogee, for the following reasons:

1. The Applicant has not submitted a written request pursuant to clause 4.6 to vary the Height of Buildings development standard, and Randwick Local Planning Panel has no authority to approve the application without the submission of a written request.
2. The proposal fails to satisfy the objectives of the R2 Low Density Residential zone in that the proposal does not recognise the desirable elements of the existing streetscape, and does not protect the amenity of residents.
3. The proposed development is inconsistent with the provisions of subclause 3.3.1 in Part C1 of Randwick Development Control Plan 2013 in relation to front setback and does not satisfy the objectives of the control with regards to maintaining a consistent rhythm of setbacks that contribute to the character of the neighbourhood, ensuring the form and massing complements and enhances the streetscape character, and to enable a reasonable sharing of views.
4. The proposed development does not comply with the provisions of clause 3.2 in relation to external wall height and fails to meet the objectives of the control in relation to establishing a suitable scale to the street, not causing unreasonable amenity impacts upon neighbouring dwellings, and ensuring the form and massing of development respects the natural topography of the site.
5. The proposed development is inconsistent with the provisions of clause 4.4 in Part C1 of Randwick Development Control Plan 2013 and does not satisfy the objectives of the control with regards to maintaining satisfactory privacy relationships with neighbouring dwellings, and ensuring trafficable roof space is integrated with the built form.
6. The proposed development shall result in unreasonable amenity impacts upon adjoining and surrounding properties with regards to visual amenity, visual and acoustic privacy, overshadowing and view loss.
7. Approval of the proposed development would set an undesirable precedent for future development along the eastern side of Denning Street and would not be in the public interest.

Attachment/s:

Nil



1. Executive summary

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

The proposal seeks development consent for alterations and additions to existing dwelling, comprising internal demolition, refurbishment and reconfiguration, plus a new level.

The key issues associated with the proposal relate to the proposed upper level, non-compliance with the maximum building heights, front setback and external wall height controls, and the two (2) storey presentation to Denning Street which is out of character with the existing streetscape. The proposed development shall also result in adverse and unreasonable impacts upon the surrounding properties with regards to visual amenity, privacy, overshadowing and view loss.

The proposal is considered to be inconsistent with several of Council’s planning controls and shall result in a detrimental impact upon the streetscape and adverse impacts upon surrounding properties with regards to view loss, privacy and overshadowing. The proposal is also considered to be inconsistent with the desired future character of the locality as established by the current planning controls and streetscape context. The proposal results in a variation to the maximum building height as a result of the upper level terrace balustrade and no clause 4.6 variation has been submitted. As such, the RLPP has no authority to approve the application. In view of the above, the application is recommended of refusal.

2. Site Description and Locality

The subject site is known as 55 Denning Street, South Coogee and has a legal description of Lot 4 in Deposited Plan 310024. The site is irregular in shape, being generally rectangular with an angled front boundary, and has a total area of 457.2m². The site is located on the eastern side of Denning Street. Vehicular and pedestrian access is gained via the 12.905m wide frontage to Denning Street. The site experiences a fall of approximately 11.4m from the front western boundary down towards the rear eastern boundary, with an average slope of approximately 31.6%.

The site is zoned R2 - Low Density Residential and is currently occupied by an existing three (3) storey dwelling house with attached garage and swimming pool in the rear. The property is surrounded by residential properties to the north, south, east and west. The Tasman Sea is located approximately 140m to the east of the site, with Wedding Cake Island located to the far north-east. Water views are currently obtained from the subject site and surrounding properties from north-north-east through to south-south-east incorporating Wedding Cake Island and the distant headlands to the north. The prevailing architectural style of the dwellings along the eastern side of Denning Street within this urban block are older style properties with traditional pitched roofs, however there is an active development consent for the adjoining property at No. 53-53A which provides for a more modern architectural design. Due to the steep topography of the site and surroundings, the existing buildings are generally two to three storeys, stepped down the sites in accordance with the topography. RLEP 2012 identifies the site as being within a Foreshore Scenic Protection Area.



Figure 1 – Existing streetscape (pre-demolition of 53 Denning Street) (Google Street view).

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Figure 2 – Subject site and adjoining properties (post-demolition of 53 Denning Street).

3. Relevant history

Subject Application

Development Application DA/782/2021 was lodged with Council on 15 December 2021. The application was referred to Council's Development Engineer for comment and/or recommendation.

17 August 2022

A Request for Information was sent to the Applicant that raised several concerns with the proposal, primarily relating to the building height, noting that the eastern side of Denning Street was characterised by single storey dwellings including recent approvals at 53 Denning Street, and view loss including a request for a view impact analysis. It was advised that an upper level addition contained within a pitched roof form may be considered acceptable in terms of bulk and scale, however, view impact considerations, etc. would still be relevant. It was also advised that the proposed roof terrace was inconsistent with clause 4.4 of Part C1.

A series of site visits to neighbouring properties was undertaken to gain an understanding of the view loss impacts. The photographs taken by the Assessment Officer were sent to the Applicant on 26 August 2022 which raised concerns with view loss from No. 76 Denning Street in particular.

05 October 2022

A follow up email was sent to the Applicant as no response or amended plans had been received. It was advised that the application could be withdrawn, otherwise determination of the application would proceed and would not be favourable.

17 October 2022

Amended plans and formal response were submitted by the Applicant which involved a re-design of the upper level including a reduced footprint, introduction of a pitch to the external walls to portray as a roof form, and minor alterations.

A preliminary review of the amended plans and response from ABC Town Planning was undertaken and it was advised that while the amended design attempts to resolve the height exceedance and view loss issues by relocating the first floor addition towards the front of the site, the addition does not read as a roof form and as a result, there is additional bulk impact on the streetscape.

Furthermore, the planning response refers to consistency with neighbouring front setbacks, however, this side of Denning Street maintains a single storey presentation with subservient roof forms. Hence the upper level setback is not consistent with the massing of neighbouring dwellings. In view of the preliminary assessment of the amended plans it was recommended that the application be withdrawn. The Applicant advised on 26 October 2022 that they wished to proceed with the renotification of the amended plans in their current form and have the application reported to the RLPP for determination. As such the amended plans were re-notified for a period of 14 days.

The assessment is based on the amended plans submitted to Council on 17 October 2022.

4. Proposal

The proposal seeks development consent for alterations and additions to existing dwelling, comprising internal demolition, refurbishment and reconfiguration, plus a new Level.

Specifically, the Applicant seeks consent for the following works:

- Partial internal demolition of the existing dwelling house;
- Alterations and additions to the existing dwelling house, including the following:

Level -2

- New stair
- New door to outdoor lounge
- New tiling to pool
- New brass palisade fence to pool area
- New concrete steps
- New balustrade to outdoor lounge terrace.

Level -1

- New door northern side elevation
- New Plant room
- New living area to Bedroom 2
- New storage/ robes
- New stairs
- New services cupboard
- New bathroom fitout
- New Ensuite fitout
- New walk in robe fitout
- New glass and doors to balcony
- New brass palisade
- New wall to Bedroom 1
- New southern elevation window to ensuite
- Reconfigured terrace
- Landscape planters to terrace.

Ground Level

- New stair
- Internal reconfiguration
- Extension of the garage to the front and new garage door
- New entranceway
- New street boundary masonry wall
- New storage room
- New WC
- New Plant room
- New doors
- Reconfigured and extension of terrace
- Landscape planters to terrace.

Proposed Level 1

- New upper floor level comprising one Bedroom, En-suite, Walk-in Robe, and internal stair access.

- New adjoining terrace to the east.
- Two (2) new skylights.
- Associated earthworks and landscaping.

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:

• Unknown address

Issue	Comment
Building Height Concerns regarding extent of variation, view loss and shadow impacts. Concerns regarding the definition of basement, and calculation of height. Overall height could be reduced by lowering of ceiling heights to comply.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.

• 1 Wisdom Street, South Coogee

Issue	Comment
Concerns regarding the new upper level which is out of character with existing properties along Denning Street.	The proposal has been amended, however does not appropriately address concerns in relation to the streetscape, and is considered to be out of character with the existing streetscape of the eastern side of Denning Street.
Bulk and scale will create adverse amenity impacts and contribute to overlooking.	The proposal, as amended, is still considered to result in unreasonable amenity impacts with an excessive bulk and scale fronting Denning Street. See Key Issues for further discussion.
Building Height Variation to height control is not minor, shall be highly visible from the street, overbearing dominance, and inconsistent with the scale of surrounding properties. The clause 4.6 variation is not well founded.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
The additional level and large scale balcony will result in overlooking impacts.	See Key Issues for further discussion.
Inconsistent with R2 objectives.	See Section 6.3 for further discussion.
The additional level will be a storey above the existing street context and shall be out of character. The approval of 53-53A Denning St was sensitively designed and is an excellence design outcome, reducing bulk and opening up views.	The proposal has been amended, however does not appropriately address concerns in relation to the streetscape, and is considered to be out of character with the existing streetscape of the eastern side of Denning Street. The approval at 53-53A Denning Street has been considered in the context of the streetscape.
The proposal includes a series of new balconies and terraces without privacy screens and overlook will be exacerbated.	See Key Issues for further discussion.

- **57 Denning Street, South Coogee**

Issue	Comment
Non-compliance with the Building Height standard.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
Adverse impacts upon solar access and the existing solar panels.	See Key Issues for further discussion.
Non-compliance with conditions of previous development consent in relation to use of balcony areas. There has been disregard for Council conditions and for Council regulations in the current proposal.	Any non-compliance with conditions of consent of previous consents are outwith the scope of this application and should be referred to Council's Building Regulatory and Compliance Department for consideration. However, the concerns in relation to planting upon the roof top and furniture have been noted and considered.
Concerns regarding privacy impacts from the terraces areas.	See Key Issues for further discussion.

- **Unknown address**

Issue	Comment
The area is overloaded with excessive buildings and noisy vehicles, impacting on the outlook of the area.	The proposal has been assessed against the relevant planning considerations, and the planning controls contained within RLEP 2012 and RDCP 2013 which are reflective of the future character of the area and a level of development anticipated for the site.

- **76 Denning Street, South Coogee**

Issue	Comment
View Loss	See Key Issues for further discussion.
The proposal shall present as double storey to the street. The flat roof is out of character with adjoining neighbours.	The proposal has been amended, however does not appropriately address concerns in relation to the streetscape, and is considered to be out of character with the existing streetscape of the eastern side of Denning Street.
Building Height The view loss can be attributed to the variation to the building height. There is a more skilful design and reduction to heights could occur. The additional floor space could be accommodated at the lower levels. Concerns regarding calculation of height and natural ground level. Concerns regarding height breach for the terrace also.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
The proposal will set an undesirable precedent and unacceptable bulk for the streetscape.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.

Issue	Comment
The 6 level nature of the dwelling is excessive in scale and bulk.	Concerns are raised regarding the proposed upper level and the detrimental impact to the streetscape and visual impact as viewed from the waterway and foreshore.

- **66 Denning Street, South Coogee**

Issue	Comment
Concerns regarding non-compliant building height and associated adverse impacts. Clause 4.6 does not demonstrate that compliance is unreasonable or unnecessary or that there are sufficient environmental planning grounds.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
View Loss	See Key Issues for further discussion.
Approval of the development would create an undesirable precedent.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.

- **64 Denning Street, South Coogee**

Issue	Comment
The Building Height is excessive and does not comply.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
View Loss	See Key Issues for further discussion.
An undesirable precedent would be set.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.

- **68 Denning Street, Coogee (2 separate submissions)**

Issue	Comment
View Loss	See Key Issues for further discussion.
Inconsistent with the existing streetscape.	The proposal has been amended, however does not appropriately address concerns in relation to the streetscape, and is considered to be out of character with the existing streetscape of the eastern side of Denning Street.
Non-compliance with building height and external wall height provisions.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
An undesirable precedent would be set.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.

Issue	Comment
View loss.	See Key Issues for further discussion.

Issue	Comment
Non-compliance with building height and external wall height.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.

- **2 Pearce Street, Coogee**

Issue	Comment
Concerns regarding increased overlooking as a result of the terrace additions.	See Key Issues for further discussion.
Non-compliance with the building height standard. The resultant building would be out of character with the street.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height. Concerns are raised regarding the compatibility of the development with the existing streetscape.

- **60 Denning Street, South Coogee (2 separate submissions)**

Issue	Comment
Non-compliance with building height which will have significant impact upon the streetscape.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height. Concerns are raised regarding the compatibility of the development with the existing streetscape.
It will set a precedent for the entire street.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.
View loss	See Key Issues for further discussion.
The area could be accommodate on Level 1 and there is no reason for the height variation.	It is noted that the additional floor area could be accommodated on the lower levels of dwelling, however the proposal must be assessed as proposed.

Issue	Comment
None of the other dwellings have 2 levels fronting the street.	Concerns are raised regarding the compatibility of the development with the existing streetscape.

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Issue	Comment
The justification of the variation is inaccurate in that the surrounding buildings do not have 2 storeys when visible from the street.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height. As stated above, concerns are raised regarding the compatibility of the development with the existing streetscape.
It will set an undesirable precedent.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.

- 72 Denning Street, Coogee

Issue	Comment
View Loss from dwelling and public domain.	See Key Issues for further discussion.
The proposal is inconsistent with the objectives and controls in relation to foreshore scenic protection areas.	See section 6.3.2 for further discussion.
Non-compliance with building height and calculation of height.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.

- 53 Denning Street, Coogee

Issue	Comment
Non-compliance with the building height and external wall height controls.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.
The proposal would set an undesirable precedent and change the well-established one-storey scale of the eastern side of Denning Street.	It is considered that the proposal will set an undesirable precedent for future development along the eastern side of Denning Street.
Concerns regarding streetscape and building bulk. There is no analysis of the streetscape in the application.	The proposal has been amended, however does not appropriately address concerns in relation to the streetscape, and is considered to be out of character with the existing streetscape of the eastern side of Denning Street.
The form and massing are inconsistent with part 4.1 building design.	Concerns are raised regarding the proposed upper level which is not considered to respect the characteristics of the site.
View loss.	See Key Issues for further discussion.
Concerns regarding visual privacy and overlooking.	See Key Issues for further discussion.

Issue	Comment
Clause 4.6 variation is not well founded.	The proposal has been amended to achieve compliance with the maximum building height and as such the submitted clause 4.6 is no longer applicable. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.

- **74 Denning Street, South Coogee**

Issue	Comment
View Loss from neighbouring dwelling and public domain.	See Key Issues for further discussion.
The proposal is inconsistent with the objectives and controls in relation to foreshore scenic protection areas.	See section 6.3.2 for further discussion.
Non-compliance with building height and calculation of height. Calculation of building height and existing ground levels.	The proposal has been amended to achieve compliance with the maximum building height. However, Council's calculation identifies that the upper terrace balustrade breaches the maximum height limit. See Key Issues for discussion in relation to building height and external wall height.

5.1. Renotification

Amended plans were received by Council on 17 October 2022. The proposed amendments involved the following:

- **Ground Floor**
 - Front-entry removal of garden bed allowing for 0.9m of entry storage.
 - GFA Increased from 99.61sqm to 100.60sqm.
- **Level One /Roof**
 - Full re design of Level One internal layout.
 - Building volume beyond grid line 3 to grid line 5 has been deleted and replaced by terrace.
 - Building volume has moved by 1500 between grid line 1 and 2.
 - Building volume has decreased by 11.91sqm. (GFA 54.16sqm to 42.25sqm.)
 - Terrace area pulled back from grid line 6.
 - Walls angled inwards as part of the roof.
 - Hoods added over windows.
- **Roof**
 - Pitch added to roof is more in line with streetscape.
 - Roof sits under the Height plane.

The amended plans were formally re-notified to surrounding properties for a period of fourteen (14) days from 06 November 2022 through to 20 November 2022. As a result of the re-notification process an additional eight (8) submissions were received from or on behalf of the following properties:

- **53 Denning Street, South Coogee**
- **57 Denning Street, South Coogee**
- **66 Denning Street, South Coogee**
- **68 Denning Street, South Coogee**
- **72 Denning Street, South Coogee**
- **74 Denning Street, South Coogee**
- **76 Denning Street, South Coogee**

- **2 Pearce Street, South Coogee**

The submissions from the adjoining properties maintained concerns with regards to view loss, adverse amenity impacts, the bulk and scale and visual impact of the development, particularly as viewed from the street, and privacy. The submissions also raised concerns regarding the front setback, the lack of formal view loss analysis or height poles, and the applicant's justification for the wall height. The matters raised in the submissions have been considered in the assessment of the application.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. SEPP (Resilience and Hazards) 2021

The site is identified as being within a Coastal Zone, comprising Coastal Use Area, pursuant to 2.11 of the Resilience and Hazards SEPP.

The Resilience and Hazards SEPP came into force on 2 March 2022. The new Resilience and Hazards SEPP shall replace the SEPP (Coastal Management) 2018, with Division 4, clause 2.11 and clause 2.12 of Division 5 of the new Resilience and Hazards SEPP applicable to the proposed development. There are no general savings and transitional provisions under the new Resilience and Hazards SEPP and therefore the application is determined under the new SEPP (Resilience and Hazards) 2021. As such consideration of the new SEPP has been undertaken in accordance with the provisions of 4.15 of the Act.

The provisions of the Coastal Management SEPP have been transferred over to the new Resilience and Hazards SEPP with particular regards to the wording of clauses 14 and 15 in relation to the Coastal Use Area and development in the coastal zone generally, with the same wording adopted in the new SEPP under clauses 2.11 and 2.12.

Clause 2.11 of the SEPP requires certain matters to be considered in the assessment of a Development Application before development consent can be granted. Furthermore, pursuant to clause 2.12 development consent must not be granted unless Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazard on the subject site or any other land.

It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the coastal land and therefore clause 2.12 is satisfied.

The provisions of Clause 2.11 stipulate that Development Consent must not be granted to development on land within the coastal use area unless the Consent Authority has considered whether the proposal shall cause any adverse impacts with regards to foreshore access; overshadowing, wind funnelling or view loss from the public domain; the visual amenity and scenic qualities of the coast; aboriginal heritage; and cultural and built environment heritage. The Consent Authority must also be satisfied that the development has been designed, sited and managed to avoid adverse impacts upon the above, or minimise or mitigate the impacts. Subclause 2.11(1)(c) also requires Council to take into account *"the surrounding coastal and built environment, and the bulk, scale and size of the proposed development"*.

As outlined within the report, the proposed development shall result in a four (4) storey building, with a two (2) storey presentation to the street. However, the proposed upper level shall be sited above the height of the adjoining properties and out of context with the existing streetscape. The subject site and surrounding properties are visually prominent on the coastline, particularly given the close proximity to the foreshore and waterway to the east. The proposed addition shall be jarring

in the streetscape as viewed from the foreshore areas and waterway, noting that the existing developments along the eastern side of Denning Street are single storey in height, and the upper level will present as a full storey as viewed from the coast. Furthermore, the resultant development does not comply with Council's built form control in relation to external wall height, resulting in an excessive level of built form on the site and an inappropriate bulk and scale, with particular regards to the upper level. As such, the proposed development is inconsistent with the bulk, scale and size of the surrounding developments, and shall be out of character with the surrounding coastal and built environment.

In view of the above, the proposal shall result in adverse impacts upon the visual amenity of the coast, and it is not considered that the proposal has been designed or sited to minimise the visual impacts. As such the proposal is found to be inconsistent with the provisions of clause 2.11 and development consent cannot be granted in this instance.

6.3. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is considered to be inconsistent with the specific objectives of the R2 zone in that the proposed addition does not recognise the desirable elements of the existing streetscape and built form, by proposing an additional level sited above the two (2) adjoining properties and out of context with the heights of buildings and number of storeys within the street. Furthermore, assessment of the application has found that the proposed development shall result in adverse impacts upon surrounding properties with regards to visual amenity, privacy, overshadowing and view loss, and as such the amenity of residents shall not be protected.

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	0.62:1	Yes
CI 4.3: Building height (max)	9.5m	9.57m to the top of the terrace balustrade. 9.239m to top most roof.	No

6.3.1. Clause 4.3 – Building Height and Clause 4.6 - Exceptions to development standards

RLEP 2012 defines building height as the vertical distance from existing ground level to the highest point of the building, where existing ground level is "*the existing level of a site at any point*". The proposed upper level is located directly above the existing lower floor level located at Level -01 and the terrace is located directly above the existing lower floor level located at Level -02. As such the existing ground level shall be the ground level below the existing floor slab of these levels.

The maximum height of the proposed development is 9.239m above the existing ground level (existing Level -01) to the roof directly above. However, the maximum height of the terrace balustrade with RL50.370 shall be 9.57m above the existing ground level. Clause 4.3 - Height of Buildings specifies a maximum building height of 9.5m for the subject site and the proposed development is numerically non-compliant with the development standard. It is noted that the Applicant states compliance with the maximum height standard.

As the proposed development results in a variation to a development standard, a Clause 4.6 exception to vary the development standard is required. The Applicant has not submitted a written request pursuant to Clause 4.6 of RLEP 2012 in relation to the contravention of the development standard, therefore Council has no authority to approve the proposed development and the height variation. Notwithstanding, it is considered that a variation to the development standard would not be supported despite provision of a written request given that the proposed development is inconsistent with the R2 zone and the objectives of clause 4.3 for the following reasons:

- The proposed height breach relates to the terrace balustrade at the proposed upper floor level. The proposed terrace shall result in adverse amenity impacts upon the adjoining properties with regards to privacy. The terrace area is also considered to be excessive in size further attributing to the visual bulk of the development, in contradiction to the objectives of clause 4.3.
- Furthermore, it is considered that there are no site specific reasons or circumstances in which compliance with the development standard is unreasonable or unnecessary, and that there are no sufficient planning grounds which warrant contravention of the development standard. It is noted that several terrace areas and areas of private open space are provided throughout the dwelling and the proposed upper level terrace is not required to achieve compliance with the POS provisions of the DCP.

6.3.2. *Clause 6.7 Foreshore scenic protection area*

The subject site is identified as being within a Foreshore Scenic Protection Area pursuant to clause 6.7 of RLEP 2012. Clause 6.7 states that development consent must not be granted for development on land identified as foreshore scenic protection area unless the development is located and designed to minimise the visual impact as viewed from the public domain of the coastline, and that the development contributes to the scenic quality of the coastal foreshore. The objectives of the clause are as follows:

- (a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,*
- (b) to protect and improve visually prominent areas adjoining the coastal foreshore,*
- (c) to protect significant public views to and from the coast,*
- (d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.*

The proposed upper level, comprising an additional storey and roof terrace, shall fully present as an additional storey as viewed from the surrounding properties and public domain, including the coastline. Due to the design of the upper level which is not considered to present as a roof form, the development will visually present as an additional storey higher than adjoining and surrounding developments and shall be out of character with the existing streetscape. There is a key characteristic of this section of Denning Street which retains a single storey streetfrontage, and the proposed development shall be jarring in this context.

Approval of the additional level would set an undesirable precedent for the streetscape and compromise the visual amenity of the street. In view of the above, it cannot be said that the proposed development recognises the visual qualities of the scenic coastal area, and the proposed additional shall detract from the existing context of the coast. It is also considered that the proposal does not protect or improve the area adjoining the coastal foreshore due to the detrimental bulk and scale attributed with the proposed upper level. As such, the proposal is found to be inconsistent with the provisions of clause 6.7 and cannot be supported in this instance.

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)(ii) – Provisions of any draft environmental planning instrument	The proposal would remain inconsistent with the provisions of clause 4.3 and the R2 zone within the draft LEP.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal fails to satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2.
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 found to be inconsistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal is inconsistent with the objectives of the R2 zone and shall result in adverse impacts upon the surrounding built and natural environment, including adverse impacts upon the adjoining properties. As such, the proposal is not considered to be in the public interest.

8.1. Discussion of key issues

- **Clause 3.2 (Building Height – External Wall Height) of Part C1, RDCP 2013**

The proposed development results in non-compliance with the maximum external wall height of 8m proposing a maximum wall height of 9.23m on the southern elevation and 9.27m on the northern elevation. The extent of the wall height variations can be seen in Figures 3 and 4 below.

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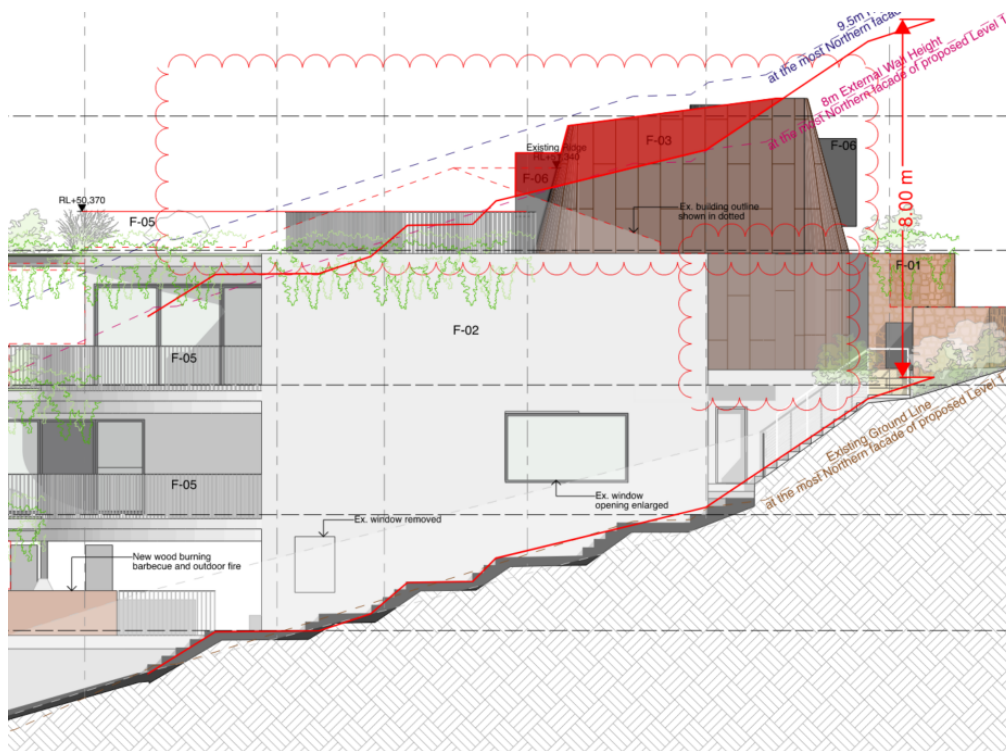


Figure 3 – Extent of external wall height non-compliance – Northern Elevation

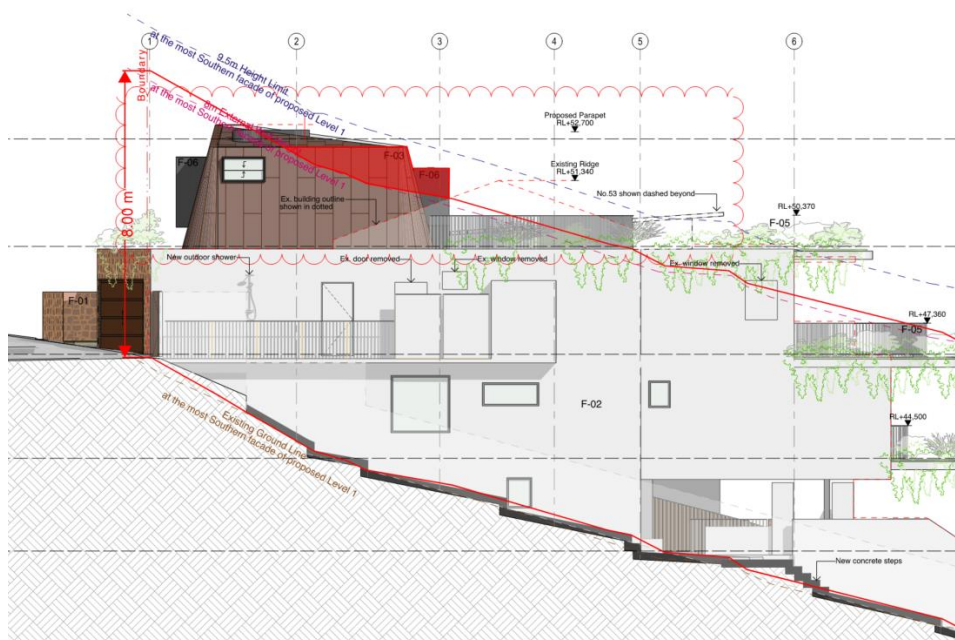


Figure 4 – Extent of external wall height non-compliance – Southern Elevation

The objectives of clause 3.2 aim to ensure that development height establishes a suitable scale to the street, does not cause unreasonable amenity impacts upon neighbouring dwellings, and ensure the form and massing of development respects the natural topography of the site.

In accordance with the DCP requirements, any structures above the external wall height are for roof elements only, and therefore any floor area at the upper level would need to be contained within a habitable roof form or be an attic style roof. The Applicant has aimed to address the external wall height non-compliance by providing the upper floor level in a "roof form". It is noted that the Applicant makes reference to the LEC matter of *41 Robey Pty Ltd v Randwick City Council [2020]* in its justification that the upper level is a roof form. However, this development was a medium density development within the R3 zone with different planning controls applicable and is different in

context. While the DCP does not specifically make reference to or provide any requirements in relation to mansard style roofs, Council has taken a consistent approach to the assessment of mansard roofs which are not considered to be a roof form for the purpose of applying the external wall height control. It should be noted that Council has dealt with several LEC matters in addition to the above in relation to mansard roofs and has consistently maintained this position that mansard roofs are not a roof form but treated as an external wall, depending on the overall design and pitch of the roof.

There is a predominant characteristic of the eastern side of Denning Street which portrays a traditional style of dwellings, incorporating a pitched roof, with the exception of the site at 53-53A Denning Street which has an active development consent for a skillion roof form, however the development at 53-53A maintains a single storey to Denning Street. It is noted that there are no examples of mansard roof designs within this portion of Denning Street. Due to the design of the proposed upper floor level, including the minimal pitch and skylights, the proposed upper level shall not present as a roof form but as an additional storey. As such the sides of the development would be considered walls, thus resulting in non-compliance with the 8m wall height. It is noted that consistency with the front setbacks within the street combined with a compliant wall height would not permit the upper level. The proposed development is not considered to be compatible with the existing streetscape character, single storey streetscape presentation and traditional roof forms. Furthermore, the four (4) storey presentation at the rear is not considered to respect the natural topography of the site with regards to form and massing, noting that the development shall be an additional storey higher than the neighbouring dwellings within this urban block. The proposed upper level also results in adverse impacts upon the neighbouring properties with regards to view loss, privacy and solar access. In view of the above, the proposal cannot be said to achieve the objectives of the control and therefore the non-compliance is not supported in this instance.

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

Subclause 3.3.1 of Part C1, specifies that the front setback must be consistent with the average setbacks of the adjoining dwellings.

Due to the topography of the eastern side of Denning Street, which slopes substantially downwards from the street, the existing streetscape is characterised by parking structures within the front setback with the dwellings further setback from the street.

The adjoining dwelling at 57 Denning Street has a front setback of 4.35m to the southern side and 8m to the northern side, and the adjoining dwelling at 53-53A shall have a front setback of 4.14m-5.2m to the dwelling and a nil setback to the garage. As such, based on the average setbacks, the front setback would be 2.175m (including the nil setback garage) or 4.245m being to the minimum setbacks of the dwellings.

In addition to the adjoining properties, the existing front setbacks within this section of Denning Street are as follows:

- 47 Denning Street – minimum 10.75m to dwelling, 6.5m-7.3m to garage;
- 49 Denning Street – 5.77m-6.61m to dwelling, 0.76m to garage;
- 51 Denning Street – 4.79m-6.66m to the dwelling, nil setback to garage.

While it is accepted that there is no definitive predominant or established front setback within the street, it must be acknowledged that the minimal/zero setbacks to Denning Street relate to the off-street parking structures only, with all the dwellings within the street setback from the front boundary. Furthermore, there are no second storeys on the developments within 47-57 Denning Street and therefore an upper level setback has not been established, however it is noted that the existing developments further to the south and north generally provide an increased setback for the two (2) storey or upper levels of the dwellings.

The proposed development shall have a minimum front setback of 1.84m-3.59m to the proposed upper level and a nil setback to the garage. The proposed setbacks are numerically non-compliant with the control and are considered to be inconsistent with the setbacks of adjoining properties and within the overall streetscape.

The relevant objectives of clause 3.3 aim:

- *To maintain or establish a consistent rhythm of street setbacks and front gardens that contributes to the character of the neighbourhood.*
- *To ensure the form and massing of development complement and enhance the streetscape character.*
- *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

As outlined above, the existing dwellings within Denning Street all provide an increased front setback to the dwelling, with a minimum setback of 4.1m provided. The proposed setback for the upper level of 1.84m-3.59m will result in a visually dominant built form and an excessive level of built form fronting the street. The two (2) storey nature of the development fronting Denning Street combined with the minimal setback will result in a form and massing that is incompatible with the existing streetscape character and shall be completely jarring, resulting in detrimental visual amenity from the public domain. The proposed upper level shall also result in adverse view loss impacts upon the adjacent properties along the western side of Denning Street. As such, the proposed development is not considered to positively contribute to or enhance the streetscape in contradiction to the objectives of the control, and the proposal cannot be supported in this instance.

- **Clause 5.1 (Overshadowing) of Part C1, RDCP 2013**

Concerns have been raised by the adjoining property to the south at 57 Denning Street and adjoining property to the east at 2 Pearce Street regarding overshadowing as a result of the proposed development.

2 Pearce Street

The property at 2 Pearce Street is located to the east of the subject site and has a north-south orientation. Concerns have been raised regarding overshadowing impacts upon the existing solar panels located on the roof of No. 2 Pearce Street. It is noted that Pearce Street slopes from west to east, with the adjoining dwelling to the east of No. 2 sited significantly lower than the neighbouring dwelling. Given the orientation of the site and the topography of the neighbouring site at No. 4, it is considered that the existing solar panels will retain a minimum of 3 hours of direct sunlight in midwinter in accordance with the control.

57 Denning Street

It is noted that the elevational shadow diagrams submitted with the original development application vary from the shadow diagrams submitted with the amended plans with particular regards to the existing overshadowing impacts in which the amended diagrams appear to be incorrect. As such, there is insufficient information to accurately assess the overshadowing impact from the amended proposal, however an estimation of the overshadowing impacts has been assessed based on the information provided.

The plan shadow diagrams demonstrate that the proposed development shall not unreasonably impact upon the existing solar panels on the western side of the roof of 57 Denning Street. Due to the west to east orientation of the subject site, overshadowing to the neighbouring property to the south at 57 Denning Street is inevitable. A search of Council's records identified that there is a sunroom/living area within the north-eastern corner of the dwelling at Ground Floor level (mid-level) and that the Family Room/Living area is located to the east on the First Floor level of No. 57. The initial shadow diagrams demonstrate that the northern windows of the Family Room and Sunroom currently receive direct sunlight in the morning period from 8am to 11am, with the windows being overshadowed from 11am onwards. The shadow diagrams also indicate that the northern window to the Family Room shall begin to be overshadowed by the proposed terraces from 10am onwards and the Sunroom from 9am onwards. As discussed further in the report, the proposed terraces/balconies are not supported due to adverse privacy impacts. Given that the extension of the terrace areas also impact upon solar access to the northern windows resulting in a numerical non-compliance, where the existing development allows a minimum of 3hrs of sunlight to the living rooms windows, the resultant solar access impacts are not considered to be reasonable in this instance.

Privacy

- **Clause 4.4 (Roof Design and Features) of Part C1, RDCP 2013**

- **Clause 5.3 (Visual Privacy) of Part C1, RDCP 2013**
- **Clause 5.4 (Acoustic Privacy) of Part C1, RDCP 2013**

Concerns have been raised by the adjoining properties at 53 and 57 Denning Street, 2 Pearce Street and 1 Widsom Street with regards to visual and acoustic privacy impacts as a result of the proposed development, with particular regards to the proposed rear balconies.

Due to the nature of the subject site and surrounding sites being within a foreshore scenic protection area and the expansive water, headland and Wedding Cake Island views obtained, there is a clear absence of privacy screens to allow view corridors to be maintained and it is inevitable that a degree of overlooking shall occur between properties. However, in order to achieve a reasonable sharing of views and privacy, Council adopts a balanced approach by limiting the extent of elevated balconies and terrace areas by size and/or width to ensure that privacy impacts associated with the proposed balconies are minimised. There is an existing balcony at the Ground Floor level adjoining the living area located to the north-east. It is noted that the existing balcony currently overlooks several of the adjoining and neighbouring properties and there is an existing visual privacy issue. The proposed development involves the extension of the Ground Floor level balcony and a new balcony at the First Floor level which shall exacerbate the existing overlooking impacts. The proposed upper level terrace and the extension of the existing Ground Floor level terrace are considered to be excessive in size, being 31.48m² and 32.68m² respectively, particularly given that the site benefits from extensive private open space within the rear yard and an additional balcony at Level -01. The proposed size of the balconies would be able to accommodate numerous persons at any one time, and given the views obtained from these areas would be highly utilised for extended periods of time. As such, it is considered that the proposed balconies shall result in adverse impacts upon the neighbouring properties with regards to visual and acoustic privacy and are not supported in their current form. Were Council in a position to support the application it would be recommended that the upper level balcony be significantly reduced in size and the Ground Floor level balcony not exceed the current size to minimise privacy impacts.

The proposed roof terrace at the First Floor/upper level is also inconsistent with the provisions of clause 4.4 which prohibits terraces on the main roof of the building. The Applicant argues that the proposed upper level is a "roof form" and therefore, the main roof of the dwelling is considered to be the extensive roof area above the Ground Floor level. As the proposed terrace shall result in adverse privacy impacts and is not integrated with the built form due to the excessive size, the proposal would also be inconsistent with the objectives of clause 4.4.

- **Clause 5.6 (View Sharing) of Part C1, RDCP 2013**

Concerns were raised by the following properties regarding view loss impacts as a result of the originally proposed development:

- 53 Denning Street (in relation to the properties on the western side of Denning Street)
- 57 Denning Street
- 60 Denning Street
- 64 Denning Street
- 66 Denning Street
- 68 Denning Street
- 72 Denning Street
- 74 Denning Street
- 76 Denning Street

In response to the amended plans, submissions were received which maintained view loss concerns from the adjoining properties:

- 66 Denning Street
- 68 Denning Street
- 72 Denning Street
- 74 Denning Street
- 76 Denning Street

As result of the submissions received and site visits undertaken by the Assessment Officer, view loss was raised as a concern with the Applicant and it was suggested that a comprehensive view loss impact analysis be submitted to demonstrate that the proposal maintains view sharing. It should be noted that no height poles were erected to demonstrate the proposal nor was any formal view loss analysis undertaken and as such the view loss assessment is an estimation based on the information submitted with the application and in Council's records. Furthermore, consideration has been given to view loss impacts upon all the properties which raised concerns throughout the entire assessment process.

Clause 5.6 of RDCP 2013 aims to ensure development is sensitive and skillfully designed to maintain a reasonable amount of views from the development, neighbouring dwellings and the public domain, and achieve view sharing. The assessment of view loss is made in relation to clause 5.6 of RDCP 2013 and the planning principal developed by the Land and Environment Court identified within *Tenacity Consulting v Warringah [2004] NSWLEC 140*.

The existing properties at 60-76 Denning Street currently experience expansive horizon water views to the Tasman Sea to the east across the front of the subject site. The sites along the western side of Denning Street also obtain views of Wedding Cake Island and the headlands to the north-east. It is considered that the proposal shall not impact upon any headland or Wedding Cake Island views from the properties at 60 through to 72 Denning Street as these views are obtained across the properties at 47-53 Denning Street, however the proposed development would result in the distant water views.

The views from No.'s 60 to 72 Denning Street are similar in nature and are documented in Figures 5 to 11 below:



Figure 5 – Existing view from upper level balcony of 60 Denning Street (blue area has been added by Objector to demonstrate estimated view loss).



Figure 6 – Existing view from Ground Floor level and adjoining balcony of 66 Denning Street.



Figure 7 – Existing view from the upper level balcony of 66 Denning Street.

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Figure 8 – Existing view from upper level balcony of 68 Denning Street.



Figure 9 – Existing view from primary living space and adjoining balcony of 68 Denning Street.



Figure 10 – Existing view from Ground Floor rumpus room and adjoining balcony of 72 Denning Street.



Figure 11 – Existing view from primary living area and adjoining balcony of 72 Denning Street.

Given the view loss impacts from these properties would be alike, a generic view loss assessment has been undertaken for these properties which is provided below:

Step 1: Views to be affected

The dwellings at 60-72 Denning Street currently enjoy expansive water views gained from several areas of the property from north-east to south-east. The affected view corridor is to the east or slight south-east/north-east and includes a water horizon view.

Step 2: Location from which the views are obtained

The subject views are from the mid-levels (being the ground floor levels) of the dwellings and the adjoining POS. These generally comprise the living areas of the dwelling. It is considered that the water views from upper levels would be impacted but the distant horizon view would be retained. The views are obtained across the front boundary of the subject site, and across the roofs of the existing dwellings at 47-57 Denning Street.

Step 3: Extent of the impact

The extent of the view loss impact shall vary depending on the location within the dwellings, and as discussed above, the upper levels would likely retain the horizon views over the proposal, however views from the principal living areas at the ground floor level shall be significantly impacted. The proposed maximum height of the development shall be RL52.899 at the north-western corner and RL52.266 at the south-western corner. As such, the proposal shall be sited higher than any of the existing dwellings within the street, with the adjoining property at No. 57 Denning Street being RL50.73 and the approved development at No. 53 Denning Street being RL50.8. While it is acknowledged that a minor portion of the horizon may be available above the roof, the proposed development will significantly impact the overall view, losing a substantial portion of the water portion of the view and interrupting the panoramic views by an abrupt built structure in comparison to the remaining of the streetscape. However given that views are likely to be retained from upper levels, the view loss would be best described as moderate.

Step 4: Reasonableness of the proposal

The view loss impact is a result of the proposed First floor level of the dwelling. As discussed previously, the proposal does not comply with the front setback and external wall height controls, and concerns are raised regarding the two (2) storey nature of the development fronting Denning Street. This section of Denning Street along the eastern side comprises single storey street presentation in order for views across the properties to be retained from the adjacent properties along the western side of the street. This single storey characteristic has also been maintained in the recent development approvals at 47 and 53 Denning Street. It is noted that if the proposal was to maintain consistency with the established front setbacks within the street in relation to the dwellings and achieve full compliance with the external wall height control, no upper level would be possible. The principal also requires Council to consider whether there is a more skillful design that would allow the applicant the same amenity while minimising the view loss impact. The proposed First Floor level comprises a bedroom, walk-in robe and en-suite. The existing dwelling is three (3) storeys at the rear, and it is considered that the additional floor space required to accommodate the bedroom and ancillary rooms could easily be provided on the lower levels of the dwelling without any impact to the existing view corridors. Furthermore, a bedroom area could also be accommodated at the First Floor level contained within a more traditional pitched roof form which would allow more of the water views to be retained and be more sympathetic to the character of the existing street. As such, it is considered in this instance that there are alternative design options that would allow the applicant the same development potential and amenity while reducing view loss impacts upon neighbouring properties, and therefore the proposed development is not supported in its current form.

74 and 76 Denning Street

The properties at 74 and 76 Denning Street gain views of Wedding Cake Island across the subject site which are likely to be impacted by the proposed upper level. Assessment of the view loss impacts is addressed below:

74 Denning Street

Step 1: Views to be affected

The dwelling at 74 Denning Street currently enjoys expansive water views gained from several areas of the property from north-east to south-east. Views to Wedding Cake Island are also gained to the north-east over 53-55 Denning Street. The affected view corridor is to the east and north-east and includes views to Wedding Cake Island and water horizon views. The existing view corridors from No. 74 can be seen in Figures 12-14 below:



Figure 12 – Existing view from primary living area and adjoining balcony of 74 Denning Street.



Figure 13 – Existing view from northern side of upper level balcony of 74 Denning Street pre demolition of 53 (ABC Planning).



Figure 14 – Existing view from southern side of upper level balcony of 74 Denning Street post demolition of 53.

Step 2: Location from which the views are obtained

The subject views are from the mid-level (being the ground floor level) and upper level (First Floor level) of the dwelling and the adjoining POS. The living area is located on the Ground Floor level with the Bedroom on the First Floor level of the dwelling. As with the other properties, it is considered that the water views from the upper level would be impacted but the distant horizon view would be retained above the roof. However, views to Wedding Cake Island would likely be impacted from the upper level balcony. The views are obtained across the front boundary of the subject site, and across the roofs of the existing dwellings at 47-57 Denning Street.

Step 3: Extent of the impact

The extent of the view loss impact shall vary depending on the location within the dwelling. The views to Wedding Cake Island will be opened up by the demolition of the dwelling at 53 and construction of the new dwelling which shall be 2.07m lower than the previous building. The view impact from the proposed development shall vary depending on the location, with views from the southern side of the upper balcony largely retained and views from the northern side of the balcony primarily lost. As with the other dwellings, it is considered that a very minor portion of the horizon may be retained above the roof, however the proposed development will severely interrupt the panoramic view of the waterway and be jarring in the overall view corridor. The view loss would be best described as moderate to severe.

Step 4: Reasonableness of the proposal

As discussed above, the view loss impact is a result of the proposed First floor level of the dwelling. The assessment of the reasonableness of the proposal as detailed above would also be applicable to the assessment at 74, and it is considered that in this instance there are alternative design options that would allow the applicant the same development potential and amenity while reducing view loss impacts upon neighbouring properties, with particular regards to retaining views to Wedding Cake Island from the whole of the upper level balcony. As such, the proposed development cannot be supported in its current form.

76 Denning Street

Step 1: Views to be affected

The dwelling at 76 Denning Street currently enjoys expansive water views gained from several areas of the property from north-east to south-east. The affected view corridor is to the east and

north-east and includes views of Wedding Cake Island and the Headland, and water horizon views. The existing view corridors can be seen in Figures 15-18 below:



Figure 15 – Existing view from upper level living room of 76 Denning Street.



Figure 16 – Existing view of Wedding Cake Island from upper level balcony of 76 Denning Street.

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Figure 17 – Existing headland view from upper level balcony of 76 Denning Street.



Figure 18 – Existing view from Ground Floor living of 76 Denning Street.

Step 2: Location from which the views are obtained

The subject views are from the mid-level (being the ground floor level) and upper level (First Floor level) of the dwelling and the adjoining POS. There are living areas located on both the Ground Floor and First Floor levels as well as a Bedroom on the First Floor level of the dwelling. The views

are gained over the front and side boundaries of the subject site and the sites at 47-53 Denning Street.

Step 3: Extent of the impact

The extent of the view loss impact shall vary depending on the location within the dwelling. View loss from the Ground Floor level would be similar to that of the other dwellings with a minor portion of the horizon view retained however the overall panoramic view adversely impacted by the protruding built form sited above the roof line of neighbouring dwellings.

The upper level balcony currently obtains partial views of Wedding Cake Island above the roof ridge of the existing dwelling at 55. Due to the increase in height by up to 1.559m, it is considered that the views to Wedding Cake Island would be obscured. However it is also noted that due to the location of the First Floor addition to towards the front of the site and the demolition of the existing pitched roof some views would be achieved towards the east from the upper level balcony. Furthermore, the extent of view loss varies depending on where on the balcony persons are located. Partial views of Wedding Cake Island from within the upper level living room would likely be lost.

The upper level balcony also has views of the distant headland which are obtained across the front and side boundaries of the subject site and the site at 47-53. As no height poles were erected it cannot be confirmed whether the end of the headland would be impacted by the proposed development, however it is noted that the proposed addition shall be sited forward of the dwelling alignment to the north and behind the front garage alignment, and therefore it is estimated that the proposed upper addition would likely result in some loss of the end of the headland view as indicated below:

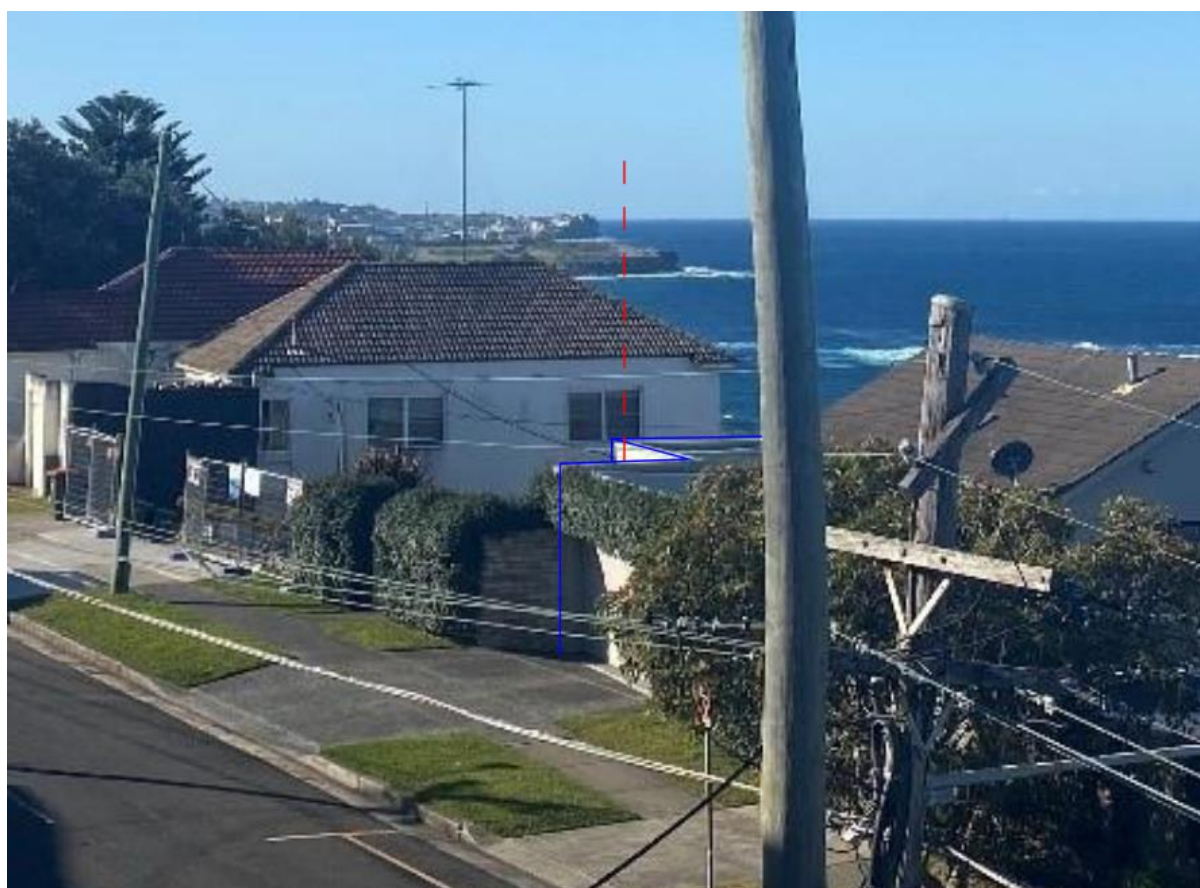


Figure 19 – Existing headland view from upper level balcony of 76 Denning Street, existing dwelling and garage alignment marked in blue, estimated siting of upper level marked in red.

In view of the above, the view loss would be best described as moderate to severe.

Step 4: Reasonableness of the proposal

The view loss impact is a result of the proposed First floor level of the dwelling. As discussed previously, the proposal does not comply with the front setback and external wall height controls which directly attribute to the view loss impacts. As previously discussed in detail, in this instance it is considered that the additional floor space could be accommodated within the lower levels of the dwelling or alternatively, the upper level could be contained within a more traditional style pitched roof form with a smaller footprint and the use of dormer windows which would be more consistent with the predominant character within the street and would lessen the impacts upon view corridors. In view of the above, the proposed development cannot be supported in its current form and is not supported.

57 Denning Street

The adjoining property at 57 Denning Street raised concerns regarding existing view loss impacts as a result of landscaping and structures/furniture on the Ground Floor level balcony which obstructs views to the headland, including the land/water interface, and the additional view loss impacts that would occur as a result of the proposed development. The proposal includes new landscaping around the perimeter of the Ground Floor level balcony which shall also be extended to the east. The proposed planting could reach heights of 2m and as such do have the potential to impact upon the view corridors. While planting could be conditioned to a maximum height, the landscaping would have to rely on regular maintenance to ensure view corridors are retained and therefore should not be relied upon. The proposed balcony is considered to be excessive and shall result in unreasonable view loss impacts as a result of the landscaping and potential furniture within the area. As such, the proposed balcony cannot be supported.

Concerns have been raised regarding view loss impacts from the public domain, however given that there shall be no change to the existing side setbacks and that water views are not currently obtained across the roof ridge, it is considered that there shall be no unreasonable view loss impact from the public domain.

Conclusion

It is considered that the proposed development shall result in unreasonable view loss impacts upon several of the surrounding properties and that in this instance there is a more skilful and compliant design that would lessen the view loss impact and achieve view sharing. As such the proposed development is inconsistent with clause 5.6 of RDCP and the Tenacity Planning Principal, and cannot be supported in its current form.

9. Conclusion

That the application for alterations and additions to existing dwelling, comprising internal demolition, refurbishment and reconfiguration, plus a new Level be refused for the following reasons:

1. The Applicant has not submitted a written request pursuant to clause 4.6 to vary the Height of Buildings development standard, and the Randwick Local Planning Panel has no authority to approve the application without the submission of a written request.
2. The proposal fails to satisfy the objectives of the R2 Low Density Residential zone in that the proposal does not recognise the desirable elements of the existing streetscape, and does not protect the amenity of residents.
3. The proposed development is inconsistent with the provisions of subclause 3.3.1 in Part C1 of Randwick Development Control Plan 2013 in relation to front setback and does not satisfy the objectives of the control with regards to maintaining a consistent rhythm of setbacks that contribute to the character of the neighbourhood, ensuring the form and massing complements and enhances the streetscape character, and to enable a reasonable sharing of views.
4. The proposed development does not comply with the provisions of clause 3.2 in relation to external wall height and fails to meet the objectives of the control in relation to establishing a suitable scale to the street, not causing unreasonable amenity impacts upon neighbouring dwellings, and ensuring the form and massing of development respects the natural topography of the site.
5. The proposed development is inconsistent with the provisions of clause 4.4 in Part C1 of Randwick Development Control Plan 2013 and does not satisfy the objectives of the control

with regards to maintaining satisfactory privacy relationships with neighbouring dwellings, and ensuring trafficable roof space is integrated with the built form.

6. The proposed development shall result in unreasonable amenity impacts upon adjoining and surrounding properties with regards to visual amenity, visual and acoustic privacy, overshadowing and view loss.
7. Approval of the proposed development would set an undesirable precedent for future development along the eastern side of Denning Street and would not be in the public interest.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

The application was referred to Councils Development Engineer for comment and/or recommendation, who provided the following advice:

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

This report is based on the following plans and documentation:

- *Architectural Plans by Studio Johnston and dated 08.12.21;*
- *Statement of Environmental Effects by ABC Planning;*
- *Detail & Level Survey by Stutchbury Jaques P/L.*

Undergrounding of power lines to site

At the ordinary Council meeting on the 27th May 2014 it was resolved that;

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

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

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 3: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning =	
2	Site planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 457.2m ² Proposed = 45.3%	Complies.
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site = 457.2m ² Existing = 18% Proposed = 18% No change to existing. The proposal is compliant with the maximum site coverage with the non-compliance largely in relation to existing decking, paving and the swimming pool.	Acceptable.
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 457.2m ² Proposed = greater than 12m x 12m	Complies.
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	Site area = 457.2m ² Proposed FSR = 0.62:1	Complies.
3.2	Building height		
	Maximum overall height LEP 2012 =	Proposed = 9.57m to terrace balustrade, 9.239m to top most roof.	Does not comply. <i>See Key Issues for further discussion.</i>
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = 9.28m on northern side, 9.23m on southern side	Does not comply. <i>See Key Issues for further discussion.</i>
3.3	Setbacks		
3.3.1	Front setbacks		
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m	Minimum = 2.175m or 4.245m Proposed = 1.84m-3.59m	Does not comply. <i>See Key Issues for further discussion.</i>

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front		
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 1.2m Existing = 1.1m Proposed = 1.1m The application notes compliance with the 1.2m side setbacks, however the architectural plans identify that the existing external walls are sited less than 1.2m. Notwithstanding, the walls are existing and all new levels comply with the minimum setbacks.	Acceptable.
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 8m Proposed = in excess of 12m	Complies.
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	The proposed design provides staggered wall planes and articulated building facades. The proposal results in a maximum wall length of 13.68m for	Acceptable.

DCP Clause	Controls	Proposal	Compliance
		a portion of the Ground Floor level, however this is an existing non-compliance, and the minor nature of the non-compliance being 1.68m is not considered to adversely impact upon the visual bulk.	
4.4	Roof Design and Features		
	<i>Rooftop terraces</i> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <i>Dormers</i> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Clerestory windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	The proposal includes a terrace on the main roof.	Does not comply. <i>See Key Issues for further discussion.</i>
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)		Complies.
4.6	Earthworks		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design	The proposed works do not involve any excavation or earthworks, with the existing modified site levels retained.	N/A

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DCP Clause	Controls	Proposal	Compliance
	viii) Minimise height and extent of any exposed under-croft areas.		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	No change to solar access to living areas.	Acceptable.
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	Concerns are raised regarding overshadowing to the adjoining property to the south and east.	Does not comply. <i>See Key Issues for further discussion.</i>
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory</i>	A BASIX Certificate has been submitted with the application. Natural lighting and ventilation shall be facilitated through the design of the dwelling.	Complies.

DCP Clause	Controls	Proposal	Compliance
	window for natural lighting and ventilation is not acceptable		
5.3	Visual Privacy		
	Windows		
	<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"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	Concerns have been raised by adjoining properties regarding overlooking from the proposed development.	Does not comply. <i>See Key Issues for further discussion.</i>
	Balcony		
	<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>	Concerns have been raised by adjoining properties regarding overlooking from the proposed development.	Does not comply. <i>See Key Issues for further discussion.</i>
5.4	Acoustic Privacy		
	<p>i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p> <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	Concerns have been raised by adjoining properties regarding noise impacts from the proposed terraces.	Does not comply. <i>See Key Issues for further discussion.</i>
5.5	Safety and Security		
	<p>i) Dwelling's main entry on front elevation (unless narrow site)</p> <p>ii) Street numbering at front near entry.</p> <p>iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place.</p> <p>iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)</p>	The main entrance is accessed via the front elevation.	Acceptable.
5.6	View Sharing		
	<p>i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.</p> <p>ii) Retaining existing views from the living</p>	The proposed development shall result in view loss from several	Does not comply. <i>See Key Issues for further discussion.</i>

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DCP Clause	Controls	Proposal	Compliance
	<p>areas are a priority over low use rooms</p> <p>iii) Retaining views for the public domain takes priority over views for the private properties</p> <p>iv) Fence design and plant selection must minimise obstruction of views</p> <p>v) Adopt a balanced approach to privacy protection and view sharing</p> <p>vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)</p>	adjoining properties.	
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	<p>i) Maximum 1 vehicular access</p> <p>ii) Locate off rear lanes, or secondary street frontages where available.</p> <p>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></p> <p>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.</p> <p>v) Minimise excavation for basement garages</p> <p>vi) Avoid long driveways (impermeable surfaces)</p>	The proposed garage is located forward of the front façade alignment and technically does not comply with the control. See further comments below.	Does not comply. See 6.2 below.
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	<p>i) The following may be considered:</p> <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage <p>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:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	The location of the off-street parking is to be retained forward of the front façade alignment. The proposal comprises a new double garage which generally complies with the provisions of clause 6.2 and the proposal will consistent with the existing streetscape.	Acceptable.
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p>	The proposed garage retains the existing side setback which is	Acceptable.

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	considered acceptable.	
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	The proposed double driveway width is a maximum of 5m.	Complies.
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m 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	Proposed garage shall be 6m in width and 6m in length. The garage is integrated with the dwelling. The garage door shall be recessed by condition.	Acceptable.
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	The fencing does not contain any chain wire or barbed wire, and shall be constructed of durable materials.	Complies.
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <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 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.	The front fence shall be a height of 1.5m. The proposed fencing comprises solid brick with timber, however the fencing is considered to be compatible with the streetscape and is considered to be acceptable.	Acceptable.

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DCP Clause	Controls	Proposal	Compliance
	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.		
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	Clothes drying facilities can be accommodated within the rear of the site.	Complies.

Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/782/2021