

Randwick Local Planning Panel (Public) Meeting

Thursday 9 March 2023



RANDWICK LOCAL PLANNING PANEL (PUBLIC)

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held in the Coogee Room on Thursday, 9 March 2023 at 1pm.

Acknowledgement of Country

I would like to acknowledge that we are meeting on the land of the Bidjigal and the Gadigal peoples who occupied the Sydney Coast, being the traditional owners. On behalf of Randwick City Council, I acknowledge and pay my respects to the Elders past and present, and to Aboriginal people in attendance today.

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

D13/23 116-118 Marine Parade, Maroubra (DA/433/2022)..... 1

Kerry Kyriacou
ACTING GENERAL MANAGER

Development Application Report No. D13/23

Subject: 116-118 Marine Parade, Maroubra (DA/433/2022)

Executive Summary

Proposal:	Development Application No. 433/2022 proposes the demolition of the existing structures and construction of a four storey residential flat building comprising 10 apartments as an Affordable Housing scheme with basement parking level at 116-118 Marine Parade, Maroubra
Ward:	Central Ward
Applicant:	MHN DESIGN UNION PTY LIMITED
Owner:	GMPL Holdings Pty Ltd
Cost of works:	\$6,824,355.00
Reason for referral:	The development contravenes the development standard for floor space ratio & building height. The development is subject to SEPP 65 as the building is 4 more storeys. A total of 21 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. 433/2022 for demolition of existing structures, and the construction of a four (4) storey Residential Flat Building, including affordable housing units and basement parking, at No. 116-118 Marine Parade, Maroubra, for the following reasons:

- The proposed development does not provide appropriate allocation of affordable housing as required under the *State Environmental Planning Policy (Housing) 2021* with regards to Floor Space Ratio.
- The proposed development does not comply with the height of buildings development standard within Clause 4.3 of the RLEP 2012. No Clause 4.6 Variation Request has been provided, and for reasons discussed herein, Council would be unlikely to support any justification.
- The proposed development does not provide for appropriate separation distances and side boundary setbacks to adjoining properties.
- The proposed development is inconsistent with Part 3F of the ADG provisions as the minimum separation between windows and balconies does not comply.
- The proposed development is inconsistent with Part 4H-1 of the ADG provisions regarding noise transfer to adjoining properties.
- The proposed development is not considered consistent with the objectives of the R3 Medium Density Residential Zone.
- The proposed development conflicts with the front setback control of the RDCP 2013 where the residential floors are forward of the prevailing setback and the basement level extends to the street boundary.
- The proposed development lacks landscaping at street level and does not provide a formal entrance to the development.
- The proposed development does not satisfy the objectives of the deep soil provisions within the DCP.
- The proposed development does not demonstrate adequate view sharing is achieved and creates unreasonable view loss to neighboring properties.
- The proposed development is not compatible with the existing or desired future character of the locality.
- The bulk and scale of the proposed development creates adverse amenity impacts on surrounding development and the overall locality.

- The proposed development does not provide for communal open space.
- The proposed development does not satisfy the visual privacy requirements as outlined in section 5.3 of the RDCP 2013.
- The proposed development creates overlooking impacts on internal areas of proposed units, and therefore results in adverse privacy impacts.
- The proposed development does not take into consideration the future development of the properties to the north in terms of solar access.
- The proposed development fails to satisfy the principles of Section 3(G), 4(f) of the ADG and Section 4.5 of the RDCP 2013.
- The number of retaining walls creates adverse amenity impacts on future occupants and the streetscape as they are considered excessive and will be compounded once fencing is provided along these boundaries. This will result in the ground level becoming a subterranean environment which results in poor amenity.
- The proposed driveway does not provide adequate room to allow for appropriate sight lines and two way movements.
- The proposed development is not within the public interest.
- The proposed development contains insufficient information to enable a proper assessment of the potential impacts of the development. The Architectural Plans lack information and are not appropriately dimensioned and therefore it is unclear as to if all rooms and Private Open Space comply with the minimum sizes under the Apartment Design Guide (ADG).

Attachment/s:

Nil



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) for the following reasons:

- The development contravenes the development standard for floor space ratio & building height
- The development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings
- A total of 21 unique submissions by way of objection were received

The proposal seeks development consent for the demolition of existing structures and the construction of a four storey residential flat building (RFB), comprising 10 apartments including affordable rental housing with basement car parking.

The key issues associated with the proposal relate to the following:

- Floor space ratio;
- Building height;
- Setbacks and separation;
- Views;
- Character of the area;
- Amenity;
- Driveway width;
- Public interest; and
- Insufficient information.

The proposal is recommended for refusal, noting that a Class 1 proceeding has been lodged with the Land and Environment Court, and a S34 date is set for March.

2. Site Description and Locality

The development site is commonly known as 116-118 Marine Parade, Maroubra, and is legally identified as Lot 11 DP 7260 and Lot 12 DP 7260. The site is located on the north-western side of Marine Parade, between Sackville Street and Bond Street. Both sites combined are rectangular in shape and comprise northern / southern boundaries of 40.625m with an eastern frontage to Marine Parade and a western boundary of 30.48m each which provides for a total site area of 1,238m².

The site has a north-north-east to south fall of 1.53m along its frontage, and a west to east fall of approximately 3.99m.

At current, the development site comprises two single storey rendered detached dwellings, both of which are elevated above street level as a result of the site's current topography. Vehicular access is direct from Marine Parade, with pedestrian access provided via stairs adjacent to the garage.

Figures 2-4 outline the location and context of the site.



Figure 2: Site Locality Plan Demonstrating the Development Site outlined in Yellow (Source: NSW Planning Portal).



Figure 3: Location Plan Demonstrating the Site Area Hatched in Blue (Source: Nearmap).

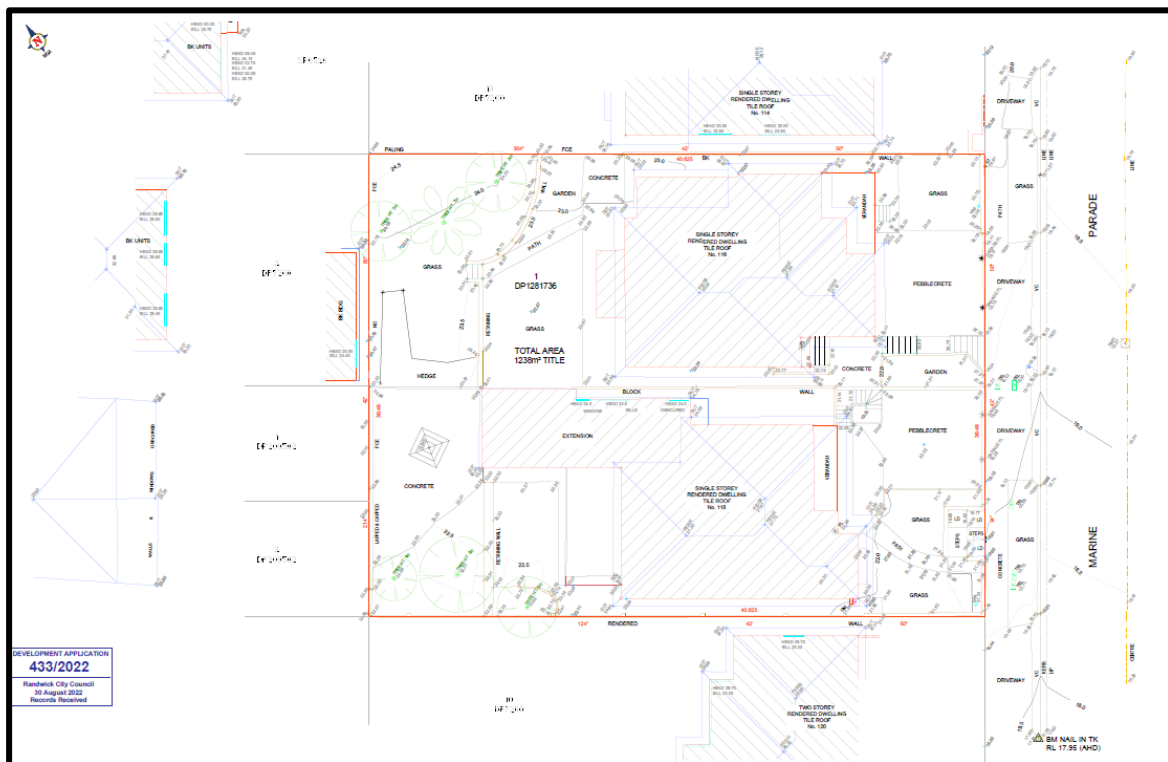


Figure 4: Site Survey Plan (Source: Land Surveyors).

Marine Parade is an eclectic mix of detached dwellings between 1-3 storeys in height, semidetached dwellings or three to four storey residential flat buildings. Given the topography of Marine Parade majority of the existing developments are elevated above street level behind garages constructed to the boundary.

3. Relevant history

Previous history relating to the site and the subject DA is summarised as follows:

- BA/42/1959 – Cottage – 116 Marine Parade, Maroubra

Council has no further relevant site history on file. The current court proceedings were filed on 10 November 2022.

4. Proposal

The proposal seeks development consent for the demolition of existing structures and the construction of a four storey RFB comprising 10 units, basement car parking, landscaping and associated works.

The built form comprises a garage/basement level that is clad in stone and appears as a landscaped podium. Above this level, the proposed four storey contemporary design with a flat roof has been articulated with setbacks, balconies, projecting landscape planter elements, screens and varied materials. The proposal also includes landscaped areas at and above ground level.

Basement Level

The Basement Level is at RL 18.40 AHD, below the existing ground level and accessed by a new driveway from Marine Parade. This level comprises 16 car spaces, storage, lobby, fan room, cold water booster pump, garbage room, switch and comms room, hydrant pump room, surfboard store and shower, rainwater tank, onsite stormwater detention tank, substation and one motorcycle parking space. Access to the levels above is via two shared lifts and internal stairs

Ground Floor Level

The Ground Floor Level is at RL 21.20 AHD and has two three-bedroom units, each containing an open plan living/dining/kitchen area, a powder room, a laundry, three ensuites, a walk-in-robe and outdoor private open space wrapping around the apartment (see Figure 6). At this level, each unit has been designated as adaptable units. Internal access to the upper floors and basement is by communal lifts and stairs.

First Floor Level

The First Floor Level is at RL 24.30 AHD and has two one-bedroom units, each containing an open-plan living/dining/kitchen area, a bathroom, a laundry and private open space. This floor also has two bedroom units, each containing an open-plan living/dining/kitchen area, a bathroom, a laundry, an ensuite, a walk-in-robe and private open space. Three units on this level (Units 101, 102 and 104) have been designated as affordable housing.

Second Floor Level

The Second Floor Level is at RL 27.40 AHD and has two three-bedroom units, each containing three bedrooms with ensuites, an open-plan living/dining/kitchen area, a powder room, a laundry, a walk-in-robe and private open space

Third Floor Level

The Third Floor Level is at RL 30.50 AHD and has two three-bedroom units, each containing three bedrooms with ensuites, an open-plan living/dining/kitchen area, a powder room, a laundry, a walk-in robe and private open space

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:

- 4/3 Beaumont Avenue, Maroubra
- 3/8 Beaumont Avenue, Maroubra
- 3/8 Beaumont Avenue, Maroubra
- 2/1 Beaumont Avenue, Maroubra
- 404 Maroubra Road, Maroubra
- 120 Marine Parade, Maroubra
- Address withheld X4
- 8/9-11 Beaumont Avenue, Maroubra
- 5/9-11 Beaumont Avenue, Maroubra
- 6/9-11 Beaumont Avenue, Maroubra
- 5 Beaumont Avenue, Maroubra
- 6/1 Beaumont Avenue, Maroubra
- 10/9 Beaumont Avenue, Maroubra
- 7 Beaumont Avenue, Maroubra
- 10/10 Beaumont Avenue, Maroubra
- 7 Beaumont Avenue, Maroubra
- 2/3 Beaumont Avenue, Maroubra
- 48 Sackville Street, Maroubra
- 4 Beaumont Avenue, Maroubra
- 9/9 Bona Vista Avenue, Maroubra
- 2A Beaumont Avenue, Maroubra
- 6/11 Bona Vista Avenue, Maroubra
- 9/9-11 Beaumont Avenue, Maroubra

Issue	Comment
Privacy	Agree, refer to key issues discussion below.
Views	Agree, refer to key issues discussion below.
Solar Access	Refer to key issues / DCP.

Issue	Comment
Financial Value of Property	Whilst Council understand this is a concern for some residents, value of land is not a considerations under S4.15 of the <i>EP&A Act 1979</i> .
Overdevelopment & Intensification & density	The development is located within a zone that permits medium density developments. It is also noted that the development site is situated on a larger allotment. Refer to 4.6 variation section and LEP zone objective discussion below.
Traffic and Parking	Refer to DCP assessment below.
Aesthetics (materials and finishes)	The Application was referred to Council's Design Excellence Panel for Consideration. Refer to Appendix 1 .
Maximum wall height control & building depth control breach	Refer to key issues discussion below.
Building height	Refer to key issues discussion below.
Setbacks	Refer to key issues discussion below.
Bulk and scale	Refer to key issues discussion below.
Visual & Acoustic Impacts	Refer to key issues discussion below.
Earthworks & Excavation	Refer to DCP assessment below.
Failure to comply with section 6.7 of the LEP and section 2.11 of SEPP (Resilience and Hazards) 2021.	Refer to relevant EPI discussion below.
Does not satisfy the objectives of the zone	Refer to key issues discussion below.
Non compliance with objectives and provisions in the ADG	Refer to key issues discussion below & Appendix 2 .
No consultation or public notification of the DA	The proposed development was notified in accordance with Council's Community Engagement Strategy.

5.1. Renotification

N/A.

6. Relevant Environment Planning Instruments

6.1. SEPP 65 - Design Quality of Residential Apartment Developments

The proposed development is the construction of a four (4) storey RFB, 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: The development was referred to Council's Design Excellence Panel ("DEP") and the DEP advice has been considered (refer to **Appendix 1**).

An assessment has also been carried out against the design criteria of the Apartment Design Guide ("ADG") (refer to **Appendix 2**). In summary, the development does not demonstrate compliance with the objectives of the ADG in relation to; Separation between balconies and windows; acoustic privacy; communal open space and entry. These form reasons for refusal.

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: The basement parking area will comprise sixteen car spaces, including three visitor spaces. One motorcycle space is also proposed.

- (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 2**).

- (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: Minimum achieved.

- (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 & 3**), 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.*

6.2. SEPP (Housing) 2021

State Environmental Planning Policy (Housing) 2021 relates to development that is defined as infill affordable housing, secondary dwellings, boarding houses, supportive accommodation and group homes and, where applicable, allows certain concessions in appropriate locations.

Application of the SEPP - Division 1: In-fill Affordable Housing

Clause 16 of the SEPP states that Division 1 applies to residential development if:

- (a) *the development is permitted with consent under another environmental planning instrument, and*

Applicant Comment: The proposed development comprises a residential flat building, which is permitted with consent in the R3 zone under the LEP.

Assessing Officer Comment: The proposed development is permitted with consent.

(b) at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing, and

Applicant Comment: Three out of the ten units or 20% of the proposed gross floor area will be used for affordable housing.

Assessing Officer Comment: Whilst the Applicant proposes three units as affordable housing, Council disagree with the 20% allocation of bonus floor space. Refer to sections 6.52. and 7 below.

(c) for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area, and

Applicant Comment: The subject site is in the Greater Sydney region and well within 50m walking distance to a bus stop on Marine Parade which is serviced by more than five buses per hour between 6am and 6pm each day, from Monday to Sunday.

Assessing Officer Comment: The development site is well accessible to public transport and services.

(d) for development on other land—all or part of the development is within 800 metres walking distance of land within 1 or more of the following zones or an equivalent land use zone— (i) Zone B1 Neighbourhood Centre, (ii) Zone B2 Local Centre, (iii) Zone B4 Mixed Use.

Applicant Comment: This subclause is not relevant.

Assessing Officer Comment: N/A. Refer to clause (c).

Floor Space Ratio

Clause 17(1)(a)(ii) of the SEPP allows development to exceed the maximum FSR permitted under another environmental planning instrument (Clause 4.4 of the LEP in this case) by a bonus calculated on a prorate basis of the amount of GFA nominated to be used for affordable housing.

Applicant Comment: The proposal nominates 272.8m² (20% of the GFA) for affordable housing purposes. Clause 17(1)(a)(ii) therefore allows a 0.2:1 FSR bonus or a maximum FSR of 1.1:1 (0.9:1 LEP + 0.2:1 Housing SEPP Bonus), with the provision of 20% of the GFA as affordable housing. The proposed FSR of 1.1:1, including 20% affordable housing, complies with Clause 17(1).

Assessing Officer Comment: Under Clause 4.4 of the RLEP 2012, the maximum floor space ratio permitted for the site is 0.9:1. An additional 0.5:1 is allowable under the SEPP (Housing) 2021 that permits a maximum FSR of 1.4:1. The applicant has provided the minimum amount of affordable housing permitted under the SEPP Housing 2021, that being 20% of the gross floor area. The applicant's area calculations, regarding the proposed floor space, have excluded areas of landings that are excessive in size, within the areas of vertical circulation and the entry door at the ground level is too deep within the floor plate of the building which would require a portion of the corridor to be included in the floor space calculations. Applying this additional floor space, the allocation of affordable housing does not reflect the allowable allocation of affordable housing under the SEPP.

Non-discretionary development standards

Applicant Comment: Clause 18 contains standards whereby the consent authority cannot refuse consent if there is compliance with the standards. Subclause (2) provides a consent authority may

consent to the development whether or not the development complies with these standards (see Table 3).

TABLE 3: PROJECT COMPLIANCE – HOUSING SEPP 2021			
Provision	Requirement	Proposal	Complies
Site Area	Min 450m ²	1238m ²	YES
Landscaped Area	Min 30% of site area Requirement = Min 371.4m ²	483.2m ² (39%)	YES
Deep Soil Zones	Min 15% of site area Requirement = Min 185.7m ²	363.7m ² (29%)	YES
	Min 3m dimension	Deep soil areas are predominantly greater than 3m	YES
	Min 65% at rear	> 65%	YES
Solar Access	Min 3hrs sunlight to living rooms & POS for min 70% of proposed dwellings between. 9am - 3pm Requirement = Min 7 dwellings	Average 70% of proposed dwellings to receive min 3hrs sunlight to living rooms & POS between 9am – 3pm at mid-winter	YES
Parking	1-bed: Min 0.5 2-bed: Min 1 3-bed or more: Min 1.5 Requirement = Min 12 spaces	16 car spaces (13 resident + 3 visitor)	YES
Dwelling Size	1-bed: Min 50m ² 2-bed: Min 70m ² 3-bed or more: Min 95m ²	1-bed: 52m ² 2-bed: 108-109m ² 3-bed: 152-163m ²	YES

Figure 5: Table 3 Referenced in Applicant Assessment of the SEPP (Housing) 2021 (Source: GSA Planning SEE).

Assessing Officer Comment: The proposed setbacks do not align with the objectives of the DCP control, which is to provide deep soil planting and to soften the development. Notwithstanding, the controls within the SEPP override those within the DCP. Council also note that the proposal states compliance with Solar Access, but fails to take into consideration future development to the north. Lastly, bedrooms and other areas have not been dimensioned, therefore it is unclear if they meet the minimum room sizes applicable.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 was gazetted on 26 June 2004, and applies to the subject site. SEPP BASIX requires all new residences in NSW to meet sustainability targets of 40% reduction in potable water consumption, and a 50% reduction in greenhouse gas emissions. In considering the merits of the proposal, it is appropriate to refer to the sustainability targets of the SEPP.

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

6.4. SEPP (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 came into effect on 1 March 2022 and consolidated the previous Coastal Management, Remediation of Land and Hazardous and Offensive Development SEPPs as Chapters 2, 3 and 4 within the new SEPP.

Clause 2.11 requires the consent authority to consider whether the proposal is likely to cause an adverse effect within the coastal use area as follows:

[2.11 Development on land within the coastal use area (orange area on the map, please determine on the following webpage)]

(1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

(b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Applicant Comment: *With regard to Clause 2.11, the proposal has been designed, sited and will be managed to avoid any adverse effects on the coastal use area. The proposal will not affect access to and along the foreshore, and will not result in overshadowing or loss of views from public places. The works are wholly located within the site and provide an appropriate bulk and scale as envisaged by Council.*

Additionally, Clause 2.12 applies to development within the coastal zone, generally. Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal is not considered likely to increase risk of coastal hazards on the subject site or other land.

Council Comment: Council does not agree with the justification provided given the impacts as discussed in the key issues section below.

Clause 4.6(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land.

The owners have advised that as the long-term use of the site has been residential, the site is unlikely to be contaminated. Upon review of Council's records, the proposed development is unlikely to be considered contaminated, and further investigation is not considered necessary.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

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

6.5.1. Clause 4.3 Building Height

The proposal does not comply with the development standard for the height of buildings. It is noted that no variation request has been submitted concerning the contravention.

The proposal fails to comply with the height of buildings development standard within Clause 4.3 of the RLEP 2012 and the external wall height requirement under the RDCP 2013. The applicant has failed to provide for a written request under Clause 4.6 of the RLEP 2012 to demonstrate sufficient environmental planning grounds to justify the variation or that the variation is in the public interest by being consistent with the zone and standard objectives.

- Under Clause 4.3 of the RLEP 2012, the maximum height of buildings permitted for the site is 12.0m. The proposal states that the proposal is compliant with the maximum height of 12m.
- The architectural plans show a lift overrun that is low in its overall height and generally inconsistent with the heights of lift overruns typically approved to meet work cover/BCA requirements.
- There is significant cut proposed on the site, and in some instances approximately 2.5m to its rear, to ensure compliance with the height control as submitted by the applicant.
- The proposed lift overrun has a height in the order of 350mm and seems too low, that would result, putting aside the issues of site excavation, as being non-compliant with the height control under the RLEP 2012.
- The plans show solar panels and exhaust ducting but none of these elements have been detailed to confirm that the height control is being met by this proposal.
- Part 4.4 of the RDCP 2013 prescribes the following objectives and controls relating to external wall height:
 - *To control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity.*
 - *To ensure that the building form provides for interesting roof forms and is compatible with the streetscape.*
 - *Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.*
- The proposed external wall height along the southern elevation, seeks a maximum variation in the order of 1.13m. The breach along the western elevation is in the same order. To the northern elevation, the breaches in the order of 300mm. It needs to be noted that these heights are achieved by the fact the ground level is being substantially excavated into the site and because height is measured from existing ground level, visually, the height will be read greater than the numerical numbers would otherwise suggest.
- Part 4.12 of the RDCP 2013 attempts to minimise the amount of cut so the built form follows natural landform. The DCP implies a maximum cut of 1m. The amount of cut proposed varies where parts are 1m however to the northern and western portions of the site, there is significant cut with the maximum cut being in the order of 2.5m.
- The change in existing levels introduces additional bulk beyond that foreshadowed by the controls as the basement, which is at street level, with 4 residential levels above, means the building reads as 5 storeys to the street, notwithstanding how one applies the numerical definitions. The controls provide for a built form that would be in the order of 3 to 4 storeys.

6.5.2. Clause 4.4 Floor Space Ratio

The proposed development does not provide the appropriate allocation of affordable housing as required under State Environmental Planning Policy (Housing) 2021.

- Under Clause 4.4 of the RLEP 2012, the maximum floor space ratio permitted for the site is 0.9:1. An additional 0.5:1 is allowable under the SEPP (Housing) 2021 that permits a maximum FSR of 1.4:1.
- The applicant has provided the minimum amount of affordable housing permitted under the SEPP Housing 2021, that being 20% of the gross floor area.
- The applicant's area calculations, regarding the proposed floor space, have excluded areas of landings that are excessive in size, within the areas of vertical circulation and the entry door at the ground level is too deep within the floor plate of the building which would require a portion of the corridor to be included in the floor space calculations. Units 101, 102 & 104 are identified as being affordable housing and the SEE states that the GFA for these units equates to the additional 20% bonus being 247.6m². In considering the

appropriate way to calculate GFA, Council believe that the total GFA for these three (3) units equates to approximately 297.26m². That's an additional 49.66m² or an additional 20%.

- Applying this additional floor space, the allocation of affordable housing does not reflect the allowable allocation of affordable housing under the SEPP.

6.5.3. *Clause 4.6 - Exceptions to development standards*

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

6.5.4. *Clause 6.7 - Foreshore scenic protection area*

The site is in a foreshore scenic protection area under the LEP. Clause 6.7(1) contains the objectives of the foreshore scenic protection area. The objectives and our responses are outlined below:

- (a) *to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,*

Applicant Response: *The proposal is compatible with the surrounding character and amenity and will enhance the qualities of the coastline. This is achieved by providing new landscaping. Stormwater and runoff will be managed in accordance with the Stormwater Drainage Plans (submitted separately) to maintain the existing drainage patterns and prevent any effect on the coastline. As an infill area, the proposal will improve stability, provide deep soil landscaping and minimise erosion.*

- (b) *to protect and improve visually prominent areas adjoining the coastal foreshore,*

Applicant Response: *The visual prominence of Jack Vanny Reserve, Maroubra Beach, Malabar Headland and the Ocean will be protected as the new building is consistent with the prevailing front setback of development along Marine Parade. The entire building will also remain below the maximum building height.*

- (c) *to protect significant public views to and from the coast,*

Applicant Response: *Public views from Marine Parade to Maroubra Beach, Malabar Headland and the Ocean will be maintained as the site is not located adjacent to cross streets, and the proposed building complies with the setback and building height controls to maintain view sharing.*

- (d) *to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.*

Applicant Response: *The proposal is appropriate in the foreshore context, as parking is located in the basement rather than above ground, and provides a mix of materials and finishes throughout that complement the coastal character.*

Clause 6.7(3) states:

(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.

Applicant Response: *As demonstrated above, the proposal maintains the natural, visual and environmental qualities of the foreshore scenic protection area, including public views of the coastline. Accordingly, the proposal contributes to the scenic quality of the coastal foreshore and satisfies Clause 6.7(3).*

Assessing Officer Comment: Council does not agree with the justification provided given that a view assessment has not been undertaken and relies on an assessment from aerial photographs and an assessment within the site looking to possible properties will be impacted.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.9:1	Refer to sections 6.5.2 above & 9.1 below	Refer to sections 6.5.2 above & 9.1 below	Refer to sections 6.5.2 above & 9.1 below
CI 4.3: Building height (max)	12m	13.32m	1.05m	8.75%

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 failed to provide written justification for the departure from the FSR standard.

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?

Assessing officer's comment: The applicant failed to provide written justification for the departure from the FSR standard, and therefore did not adequately demonstrate that compliance with the standard is unreasonable.

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

Assessing officer's comment: The applicant failed to provide written justification for the departure from the FSR standard and therefore failed to provide sufficient planning grounds to justify the contravention.

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

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

Assessing officer's comment: The desired future character of the locality is established in the planning standards and controls that apply to the site. The size and scale of the proposed development is not considered compatible with the locality given the variations proposed.

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

Assessing officer's comment: The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

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

Assessing officer's comment: N/A.

(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.*

Assessing officer's comment: The development will adversely impact the amenity of the adjoining properties in terms of visual bulk, loss of privacy, solar access and overshadowing. Refer to the Key Issues in Section 7 for further discussion.

The development is therefore not consistent with the objectives of the floor space ratio 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: As discussed within the Key Issues in Section 7, the proposal is inconsistent with the specific objectives of the zone in that the proposed built form will not contribute to the desired future character of the area and results in adverse amenity impacts to the neighbouring properties.

The development is therefore inconsistent with the objectives of the FSR standard and the R3 zone. Therefore, the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that development consent should not be granted for development that contravenes the FSR development standard.

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

Clause 4.6 of RLEP 2012 applies to vary a development standard imposed by the LEP or any other environmental planning instrument. The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 seeking to justify the contravention of the height of building control development standard in clause 4.3 of RLEP 2012.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in **Appendix 2/3**.

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 Randwick DCP 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 2**) rather than those in the DCP.

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	There are a number of draft amendments to the RLEP 2012 that have been the subject of public consultation under the Act. Whilst these draft amendments apply to the land within the LGA, it is noted that none of these amendments specifically change the provisions affecting this subject site.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy 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 inconsistent with the dominant character of the locality.</p> <p>The proposal will result in detrimental environmental impacts on the locality.</p>

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	The site does not have sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is not considered suitable for the intended use.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and will result in any significant adverse environmental and social impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Floor space ratio

The proposed development does not provide the appropriate allocation of affordable housing as required under State Environmental Planning Policy (Housing) 2021.

- Under Clause 4.4 of the RLEP 2012, the maximum floor space ratio permitted for the site is 0.9:1. An additional 0.5:1 is allowable under the SEPP (Housing) 2021 that permits a maximum FSR of 1.4:1.
- The applicant has provided the minimum amount of affordable housing permitted under the SEPP Housing 2021, that being 20% of the gross floor area.
- The applicant's area calculations, regarding the proposed floor space, have excluded areas of landings that are excessive in size, within the areas of vertical circulation and the entry door at the ground level is too deep within the floor plate of the building which would require a portion of the corridor to be included in the floor space calculations.
- Apply this additional floor space, the allocation of affordable housing does not reflect the allowable allocation of affordable housing under the SEPP.

Building height

The proposal does not comply with the development standard for the height of buildings. It is noted that no variation request has been submitted concerning the contravention.

The proposal fails to comply with the height of buildings development standard within Clause 4.3 of the RLEP 2012 and the external wall height requirement under the RDCP 2013. The applicant has failed to provide for a written request under Clause 4.6 of the RLEP 2012 to demonstrate sufficient environmental planning grounds to justify the variation or that the variation is in the public interest by being consistent with the zone and standard objectives.

- Under Clause 4.3 of the RLEP 2012, the maximum height of buildings permitted for the site is 12.0m. The proposal states that the proposal is compliant with the maximum height of 12m.
- The architectural plans show a lift overrun that is low in its overall height and generally inconsistent with the heights of lift overruns typically approved to meet work cover/BCA requirements.
- There is significant cut proposed on the site, and in some instances approximately 2.5m to its rear, to ensure compliance with the height control as submitted by the applicant.
- The proposed lift overrun has a height in the order of 350mm and seems too low, that would result, putting aside the issues of site excavation, as being non-compliant with the height control under the RLEP 2012.
- The plans show solar panels and exhaust ducting but none of these elements have been detailed to confirm that the height control is being met by this proposal.
- Part 4.4 of the RDCP 2013 prescribes the following objectives and controls relating to external wall height:

- *To control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity.*
- *To ensure that the building form provides for interesting roof forms and is compatible with the streetscape.*
- *Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.*
- The proposed external wall height along the southern elevation, seeks a maximum variation in the order of 1.13m. The breach along the western elevation is in the same order. To the northern elevation, the breaches in the order of 300mm. It needs to be noted that these heights are achieved by the fact the ground level is being substantially excavated into the site and because height is measured from existing ground level, visually, the height will be read greater than the numerical numbers would otherwise suggest.
- Part 4.12 of the RDCP 2013 attempts to minimise the amount of cut so the built form follows natural landform. The DCP implies a maximum cut of 1m. The amount of cut proposed varies where parts are 1m however to the northern and western portions of the site, there is significant cut with the maximum cut being in the order of 2.5m.
- The change in existing levels introduces additional bulk beyond that foreshadowed by the controls as the basement, which is at street level, with 4 residential levels above, means the building reads as 5 storeys to the street, notwithstanding how one applies the numerical definitions. The controls provide for a built form that would be in the order of 3 to 4 storeys.

Setbacks and separation

The proposed development should be refused as the separation distances and side boundary setbacks are considered unsatisfactory to the adjoining properties.

- The proposal is inconsistent with Part 3F-1 of the ADG provisions as the minimum separation between windows and balconies is not achieved and results in adverse visual and acoustic privacy impacts to the adjoining properties to the north and south. Although the setbacks are compliant to the rear boundary, the provision of the proposed balconies are excessive and visual privacy could be improved to the western properties. The proposed side setbacks should be 6m including the outer edged of the balconies to the side boundaries. The proposal in this regard is also in conflict with Section 5.3 of RDCP regarding visual privacy.
- The proposal is inconsistent with Part 4H-1 (Acoustic Privacy) of the ADG provisions given noise transfer created by the lack of separation to adjoining properties. The proposal in this regard is also in conflict with Section 5.4 of RDCP regarding acoustic privacy.
- The proposal is inconsistent with the R3 Medium Density Zoning objectives under the Randwick Local Environmental Plan 2012 regarding protecting the amenity of residents.
- The proposal is inconsistent with the setbacks objectives under Section 3.4 of the Randwick Development Control Plan 2013 (RDCP2013) which requires “to ensure adequate separation between buildings for visual and acoustic privacy, solar access, air circulation and views.”
- The proposal conflicts with Section 3.4.2 Control (ii) of the RDCP 2013 as the proposal does not provide additional side setbacks over those specified in control (i), so as to provide building separation; improve visual amenity and outlook from development and adjoining residents; provide visual and acoustic privacy for the development and adjoining residences; ensure solar access and natural ventilation for the development and the adjoining residences, including view loss impacts from the adjoining properties.
- The proposal conflicts with Section 3.4.1 Front Setbacks control (i) and (iv) as the residential floors are forward of the prevailing setback and the basement level floor extends to the street boundary.
- The applicant submission takes the lesser of the setbacks to the street to justify the prevailing setback. The applicant's submission shows setbacks in excess of the 6.5m alignment proposed. The building accordingly should have a greater setback from the street.

- The proposed basement level extends all the way to the street resulting in a form that lacks landscaping at the street level nor more importantly, provide a proper front entrance to the development. What is proposed is a continuous wall that does not provide a sense of arrival. The existing walls to the street is not justification noting that along the entire stretch of Marine Street, built form has a better street level interface and this proposal should be a positive precedent to change with an element that should be characteristic of the streetscape.
- The proposed setbacks do not align with the objectives of the control, which is to provide deep soil planting and to soften the development.
- Although the built form may have a varied facade the louvre system squares the building providing for greater bulk than what is necessary.

Views

The proposed development should be refused as it does not demonstrate adequate view sharing and is likely to result in unreasonable view loss to neighbouring properties.

- The applicant acknowledges in their SEE that a view assessment has not been undertaken and relies on an assessment from aerial photographs and an assessment within the site looking to possible properties that will be impacted.
- The proposal breaches the setback controls, the external wall height control under the RDCP 2013 as well as a possible breach to the Height control under RLEP 2012.
- The applicant has not addressed the Tenacity Consulting v Warringah Council Planning Principle. The applicant has not demonstrated that a more skilful design could not be achieved.
- The proposal has failed to address Section 5.5 of RDCP2013 in terms of view sharing.

Character of the area

- The street does not have any new form that is of a scale as proposed and thus the proposal is not considered compatible with the streetscape. Having regard to view loss issues, it places greater emphasises on whether a more skilful design could be accommodated on the site, especially given breaches to the setback controls.
- The development is not compatible with the existing or desired future character of the local area or the prevailing streetscape.
- Clause 19(3) of the Housing SEPP 2021 requires the development to be compatible with the desirable elements of the character of the local area.
- The presentation of the basement level at the street alignment is not characteristic of building form along Marine Street more holistically. Although a built form element of this nature may already exist on the site, it doesn't align with the future character of the area. The proposed setbacks in this street, should align more so with the DCP compared to the existing situation.
- The proposed side boundary setbacks result in a form that is also uncharacteristic with the future character of the area.
- The presentation of the development in terms of its height to the street, given the entry of the basement level, results in a built form that will read as 5 storeys and is considered excessive. There is no other newer of this bulk proposed along Marine Parade.

Amenity

- The proposed development will result in unreasonable amenity impacts on the future residents of the site and on adjoining properties.
- The proposal does not meet Objective 3D-1 of ADG as the submitted plans indicate the provision of no communal open space when an area of at least 25% of the site area is required.
- The proposal does not satisfy the objectives of Section 5.3 Visual Privacy of RDCP 2013 to ensure new development is designed so that its occupants enjoy visual and acoustic privacy, whilst maintaining the existing level of privacy of adjoining and nearby properties and Section 5.4 Acoustic Privacy of RDCP 2013 to ensure a high level of amenity by providing for reasonable level of acoustic privacy for dwellings and neighbouring properties.

- The entry to the building is not clearly visible given the architectural form of the building mass at the street level. The design also provides an inferior arrangement for disabled access that sends a person with a disability through a series of ramps and corridors within the basement level. A chair lift/platform lift should be considered at the entry rather than a secondary form of access through a basement car park.
- Balconies to units 102 and 104, to the centre of the site, can look back into the living room areas and the balconies of units 101 and 103, resulting in a privacy issue.
- All bedrooms should be dimensioned, excluding the robes, to ensure compliance with minimum room sizes as required under the ADG provisions.
- The applicant states that solar access is compliant with the ADG provisions however the design fails to take into consideration a future development to the north to ensure compliance.
- The Housing SEPP requires 3 hours of solar access. Should this not be achieved, having regard to future built form as well, then the applicant is required to submit a cl4.6 given clause 4.15 (3) of the EP&A Act.
- The proposed entry to the development does not meet the principles contained with Section 3(G), 4(F) of the ADG provisions and Section 4.5 of the RDCP 2013 in that the entry is not legible.
- The amount of retaining walls along the boundaries is considered excessive and compounded once fencing is provided along the boundaries, that the ground level will be within a subterranean environment providing for a poorer amenity outcome.
- The proposed balconies should be dimensioned to ensure compliance with the minimum width requirements set by the ADG provisions.

Driveway width

- The driveway width is too narrow to allow for appropriate sight lines and two-way movements.
- The application proposes a 3.6m wide driveway. Although this driveway meets the minimum requirements under AS 2890.1, it is too narrow to service 16 car spaces.
- The proposed Driveway should be a minimum width of 4.5m to address sight lines and passing vehicles.
- The applicant has not demonstrated how cars get exist the car park in a forward direction if all the visitor car spaces are occupied.

Public interest

The proposed development is not in the public interest.

- The proposed application should not be approved having regard to the matters raised in the submissions received by Council insofar as those matters coincide with the key issues outlined within this report.

Insufficient information

- The Applicant has failed to clarify as to whether a substation is required given the preference is that this area be set aside as deep soil planting.
- The Applicant has failed to clarify the location of the drying areas within the development.
- The Applicant has failed to clarify the lift type given the lift overrun seems too low for the scale of this proposal.

10. Conclusion

That the application to for the demolition of all structures and the construction of a four storey residential flat building be refused for the reasons mentioned herein.

Appendix 1: Referrals

1. Design Excellence Panel Comments

INTRODUCTION

Attached is a copy of the minutes relating to this Design Excellence Advisory Panel meeting.

The Panel's comments are intended to assist the applicant and Council in their design consideration of an application against all relevant State and Local Government development controls.

Attention is also drawn to the following.

- *SEPP 65, including the nine Design Quality Principles and the requirements for a Qualified Designer (Registered Architect) to provide Design Verification Statements throughout the design, documentation, and construction phases of the project.*
- *The Apartment Design Guide, as published by Planning NSW (July 2015), which provides guidance on all the issues addressed below. The absence of a comment under a head of consideration does not imply that matter to be satisfactorily addressed, more likely the changes are suggested elsewhere to generate a desirable change.*
- *NSW Housing SEPP 2021.*

These documents are available from the NSW Department of Planning.

Note:

The Design Excellence Advisory Panel is appointed by Randwick Council. The Panel's written and verbal comments are their professional opinions and constitute expert design quality advice to Randwick Council, the architect and the applicant.

1. *To address the Panel's comments, the applicant may need to submit amended plans. Prior to preparing any amended plans or attending additional Panel presentations, the applicant MUST discuss the Panel's comments and any other matter that may require amendment with Council's assessing Planning Officer.*
2. *When addressing the Panel's comments by way of amendments, if the applicant does not propose to address all or the bulk of the Panel's comments, and wishes to make minor amendments only, then it should be taken that the Panel considers the proposal does not meet the SEPP 65 requirements or Design Excellence Principles. In these instances it is unlikely the scheme will be referred back to the Panel for further review.*

PANEL COMMENTS

DA INFORMATION

Demolition of the existing buildings and construction of a 4-storey residential flat building comprising 10 dwellings including 3 affordable dwellings with basement parking for 16 vehicles and landscape works.

LEP DCP Control TABLE			
LEP DESCRIPTION	COUNCIL STANDARD	PROPOSED	COMPLIANCE
Floor Space Ratio (Maximum)	0.9:1 (LEP) + 0.2:1 (Housing SEPP FSR Bonus) = 1.1:1	1.1:1	Yes

Height of Building(Maximum)	12m	12.8	No

PANEL COMMENTS

1. Context and Neighbourhood Character

- the quality and amenity of the public domain

- The street wall facing the public domain is suitable in this context.
- The presence of the services facilities, e.g. hydrant booster, could be minimised to increase the amount of stone in the street wall.
- The projecting roof forms sit well within the newer building designs in this context.

2. Built Form and Scale

- The two-block form successfully modulates the bulk of the building

3. Density

- The proposal amounts to an increase in density for this well-serviced area.

4. Sustainability

- The proposal's proximity to its neighbours compromises sustainable aspects such as privacy and solar access, see discussion in 6. Amenity below.

5. Landscape

- The landscaping shown in front of the building on the photomontage creates a subtle foil. The landscape plans should incorporate a commensurate amount of planting in the front setback. It should specify more substantial trees and bushes with the requisite soil depth.
- A plan of management should be provided detailing irrigation provisions and maintenance of balcony plants.
- Landscape in the side setbacks should provide privacy between the buildings.

6. Amenity

- The large apartments and balconies have good internal amenity. However, the large floor area compromises neighbours' amenity, including solar access, views, and privacy.
- The apartments and entry hall are well lit.
- The apartments have too much window area and accessible balconies directly overlooking the side and rear neighbours.
- The side setbacks are insufficient for a building of this height as they allow too much overlooking of neighbours and poor view sharing.
- The large vertical louvres are more successful at maintaining ocean views at the expense of affording privacy between neighbours. Their design should consider view angles to the existing neighbours and potential future development of the sites.
- The rear Level 1 units' layouts have unsatisfactory internal amenity due to the bedroom and bathroom doorways leading directly off the dining area.
- Narrowing of the entry hall at the lift lobby should be avoided.
- Apartment entry doors could be staggered.

7. Safety

- The long entry access ramp requires some form of passive surveillance to it.
- The storage and surfboard room could be more visually permeable.

8. Housing Diversity and Social Interaction

- *There is little opportunity for social interaction, given the lack of communal space.*
- *The stairwell is well lit which would encourage it's use and social interaction.*

9. Aesthetics**- Architectural Design, Materials and Detailing**

- *The modulated form, cantilevering front balconies, and pale natural colours successfully contribute to the streetscape.*
- *A 1:10 section detailing the facade, screen, balcony, materials and construction should be provided, showing weatherproofing for the site's harsh climate.*
- *The two part form of the building is successful with consistent side setbacks; it would be adversely affected by increasing side setbacks at the top only.*

SUMMARY AND RECOMMENDATIONS

The proposal is aesthetically pleasing in this context. However, the building setbacks need to be increased to ameliorate unsatisfactory impacts on neighbours' privacy, views and solar access. The amount of glazing on the north, south, and west facades needs to be reduced and screening redesigned to afford proper privacy to the neighbours. More substantial landscaping is required,

2. External referral comments:**2.1. NSW Crown Lands**

Department of Planning and Environment

CM9 Ref: DOC22/194403

Randwick City Council
30 Frances Street
Randwick NSW 2001

Email: council@randwick.nsw.gov.au

Dear Sir/Madam

Proposed Development: DA/433/2022

Applicant: MHN Design Union Pty Ltd
Location: 116-118 Marine Parade, Maroubra

I refer to Council's letter dated 8 September 2022 requesting comments for the above development proposal.

The Department of Planning and Environment – Crown Lands (the department), as adjoining landowner has reviewed the development application in accordance with the principles of Crown land management (s.1.4 *Crown Land Management Act 2016*) and offers no objections to the proposed development. However, it is noted that Marine Parade is still vested with the Department as a Crown public road, the following has been noted.

- Marine Parade is a constructed road and appears to be maintained.
- Marine Parade provides main access to local residential properties.

With the above identified factors and to ensure Marine Parade is managed in the most efficient way, the Department recommends the Council investigate to transfer Marine Parade (and any developed Crown roads in the vicinity) to the management and control of Randwick City Council.

Should the proposed development be modified in any manner that impacts the adjoining Crown land, e.g. by amendment to the development proposal or draft conditions of consent, the department requests an opportunity to further review the application prior to determination.

Any application for road transfer can be made by submitting a Crown Road Transfer Application Form which is available on the department's website, and should be submitted to cl.enquiries@crowland.nsw.gov.au

Should you require any further information, please do not hesitate to contact Lea Weekes-Randall at the Parramatta Crown Lands Office by phone on 02 8222 4148 or email Lea.weekes-randall@crowland.nsw.gov.au.

Yours sincerely

Lea Weekes-Randall
A/ Natural Resource Officer
Department of Planning and Environment – Crown Lands

Date: 16 September 2022

437 Hunter St, Newcastle, NSW 2300
PO Box 2155, Dangar, NSW 2309
Tel: 1300 886 235 Visit: www.industry.nsw.gov.au/lands

3. Internal referral comments:

3.1. Development Engineer

Parking, Drainage, Waste & Flooding impacts are all ok

I have a minor issue with the access driveway width which I would like to see a bit wider to improve manoeuvring and sightlines on Marine Parade.

The driveway is currently proposed as 3.6m wide, which is at the minimum permitted by AS 2890.1. I would like to see it widened to at about 4.5m in consideration of the above aspects and the number of spaces served (16).

Doesn't have to incorporate a passing bay.

Table 3.1 and 3.2 in AS 2890.1 requires driveways serving <25 spaces off local roads to be 3m - 5.5m in width. When Allowing for clearances the minimum is actually 3.6m which is what is proposed.

3.2. Landscape Technician

There's no major vegetation that will pose any issues out there, and the Landscape Plans are also of a high quality, containing mostly native coastal species which are suitable for the location.

They've shown some strategic grouping of native palms around the perimeter of the site which I personally never object to as they don't form a 'green screen' like a solid tree canopy would, and are the best option for offering partial screening/privacy between sites as well as offering visual relief/interest etc.

I'd like to see these new accent plantings provided but am obviously aware that loss of water views is usually a major issue in these situations, and has always come up before, so let me know if that's also the case here.

The only thing I need detail on is the soil depth to be provided for podium planting & the upper balconies – I can't see that they've nominated that anywhere?

Appendix 2: 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)		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).		Yes.												
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)	< 650m ²	-	7%	650–1,500m ²	3m	7%	>1,500m ²	6m	7%		Yes.
Site Area	Min. Dimension	Deep Soil Zone (% site)													
< 650m ²	-	7%													
650–1,500m ²	3m	7%													
>1,500m ²	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> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</p>	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		No.
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													
3J-1	Bicycle and Car Parking														
	For sites located within 800m of a light rail stop, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments.	1-bed: Min 0.5 2-bed: Min 1 3-bed or more: Min 1.5	Yes.												

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Clause	Design Criteria	Proposal	Compliance
	<p>or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street</p>	Requirement = Min 12 spaces	
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.		Yes.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter		Yes.
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		Yes.
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		Yes.
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>		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>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>		Unclear.
	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		Yes.

Clause	Design Criteria	Proposal	Compliance															
	area of the room. Daylight and air may not be borrowed from other rooms																	
	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)		Unclear.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments		Yes.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts		Yes.															
4E	Apartment Size and Layout																	
	<div>All apartments are required to have primary balconies as follows:<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><div>The minimum balcony depth to be counted as contributing to the balcony area is 1m</div></div>	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		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		Yes.															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight		Yes.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40		Yes.															
4G	Storage																	
	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:<ul style="list-style-type: none">• Studio apartments - 4m³• 1 bedroom apartments - 6m³• 2 bedroom apartments - 8m³• 3+ bedroom apartments - 10m³<div>At least 50% of the required storage is to be located within the apartment</div></div>		Yes.															

Appendix 3: DCP 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.		Yes.
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.		Yes.
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.		Yes.
	(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).		Yes.
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.		Yes.
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.		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"> • 1space 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 		Yes.
	Motor cycle requirements:		Yes.

	5% of car parking requirement		
4.	Bicycles		
	Residents: • 1 bike space per 2 units Visitors: • 1 per 10 units		Yes.

3.3 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: • Two block / courtyard example • T-shape example • U-shape example • Conventional example		Yes.
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (619m ²) is to be landscaped open space.	770.6m ²	Yes.
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (309.5m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	336.7m ²	Yes.
	(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.		Yes.
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.		Yes.
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.		Yes.
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.		Yes.
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be:		Yes.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (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. 		
	<p>For residential flat buildings:</p> <ul style="list-style-type: none"> (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. (vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m. 		Yes.
2.3.2	Communal open space		
	<p>Communal open space for residential flat buildings is to be:</p> <ul style="list-style-type: none"> (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. 		No.
3.	Building Envelope		
3.3	Building depth		
	<p>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.</p>	19m	Yes.
3.4	Setbacks		
3.4.1	Front setback		
	<ul style="list-style-type: none"> (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 		No. Residential floors are forward of the prevailing setback and the basement level floor extends to the street boundary.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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>		
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>		No.
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth or 5m, whichever is the greater.	6.08m	Yes.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
4.	Building Design		
4.1	Building façade		
	<ul style="list-style-type: none"> (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. 		No.
4.2	Roof design		
	<ul style="list-style-type: none"> (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. (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 		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. 		N/A.
4.4	External wall height and ceiling height		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.		No.
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.		Yes.
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.		No.
	(ii) Present new development to the street in the following manner: <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 buildings, provide direct entries to the individual dwellings within a development from the street where possible. - 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. Postal services and mailboxes (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.		No.
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 		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>doors and apartment entry doors.</p> <ul style="list-style-type: none"> - 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. 		
	<p>(ii) Use multiple access cores to:</p> <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites. - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. 		No.
	<p>(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.</p>		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>		Yes.
	<p>(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.</p>		
	<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>		
4.8	Balconies		
	<p>(i) Provide a primary balcony and/or</p>		Yes.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	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.		
	(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.		
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>		Yes. Refer to DEAP comments in Appendix 1.
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 is demonstrated that the site gradient is too steep to		No.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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>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 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).</p>		The amount of retaining walls along the boundaries is considered excessive and compounded once fencing is provided along the boundaries, that the ground level will be within a subterrain environment providing for a poorer amenity outcome.
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.		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.		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.		Noted.
	Solar access for surrounding development		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(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.</p> <p>(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.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>		Unclear.
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.		Yes.
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.		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.		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.		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.		Yes.
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.		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		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (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. (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. (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. (v) Incorporate materials and design of privacy screens including: <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 		No.
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 		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. 		No.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<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 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.		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.		Yes.
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.		No.
	(vi) Resident car parking areas must be equipped with security grilles or doors.		Yes.
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.		Yes.
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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.		Yes.
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.		Noted.
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.		Unclear.
6.	Car parking and access		
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.		N/A.
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.		Yes.
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.		No.
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.		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. (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.		Yes.
6.2	Configuration		
	(i) With the exception of hardstand car spaces and garages, all car parks		Unclear.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	must be designed to allow vehicles to enter and exit in a forward direction.		
	(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.		Yes.
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (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. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - 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.		Partial.
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: - Steel post and chain wire - Barbed wire or other dangerous materials		No.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.		
7.2	Front Fencing		
	(i) The fence must align with the front property boundary or the predominant fence setback line along the street.		No.
	(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.		No.
	(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.		No.
	(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios: - 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. 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.		No.
	(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.		Yes.
	(vi) The preferred materials for front fences are natural stone, face bricks and timber.		Yes.
	(vii) Gates must not open over public land.		Yes.
	(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.		N/A.
7.3	Side and Rear Fencing		
	(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		No.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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>		
7.6	Storage		
	<p>(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.</p> <p>(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.</p> <p>(iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <p>(a) Studio apartments – 6m³</p> <p>(b) 1-bedroom apartments – 6m³</p> <p>(c) 2-bedroom apartments – 8m³</p> <p>(d) 3 plus bedroom apartments – 10m³</p>		Yes.
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.		No.
	(ii) Provide internal laundry for each dwelling unit.		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, 		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none">screen by suitable balustrades.Air conditioning units must not be installed within window frames.		

Responsible officer: Isobella Lucic, Senior Environmental Planning Officer

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