

Randwick Local Planning Panel (Public) Meeting

Thursday 13 April 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, 13 April 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

D19/23	3 & 4 Llanfoyst Street, Randwick (DA/526/2022)	1
D20/23	11 Mundarrah Street Clovelly (DA/123/2022)	77
D21/23	59 Beach Street, Coogee (DA/637/2019/D)	107

Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D19/23

Subject: 3 & 4 Llanfoyst Street, Randwick (DA/526/2022)

Executive Summary

Proposal: Demolition of existing structures, lot amalgamation and the construction of a four storey Residential Flat Building

Ward: East Ward

Applicant: Hamid Samavi

Owner: Parseh Llanfoyst Pty Ltd

Cost of works: \$6,167,067.00

Reason for referral:

- The development contravenes the development standard for floor space ratio by more than 10%
- The development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings.

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 526/2022 for demolition of existing structures and the construction of a four (4) storey residential flat building, at No. 3 7 4 Llanfoyst Street, Randwick, for the following reasons:

1. The floor space ratio for the proposed development does not comply with the development standard in clause 4.4 of the RLEP 2012 and the written request made in relation to the contravention of the development standard does not satisfy the requirements of clause 4.6.
2. The proposed development proposes unsatisfactory separation distances and side boundary setbacks with regards to adjoining properties.
3. The proposed development exceeds the maximum wall height control.
4. The proposed development creates unreasonable amenity impacts on future occupants of the site as well as on adjoining properties.
5. The proposed development failed to demonstrate that the extent of earthworks proposed were necessary and appropriate.
6. The proposed development does not provide for appropriate levels of landscaping and results in a poor outcome.
7. The proposed development fails to provide for the appropriate number of car parking spaces and increases the demand for on street car parking.
8. The proposed development fails to provide for bicycle parking and did not justify the reason for the deficiency.
9. The presentation to the streetscape is inappropriate.

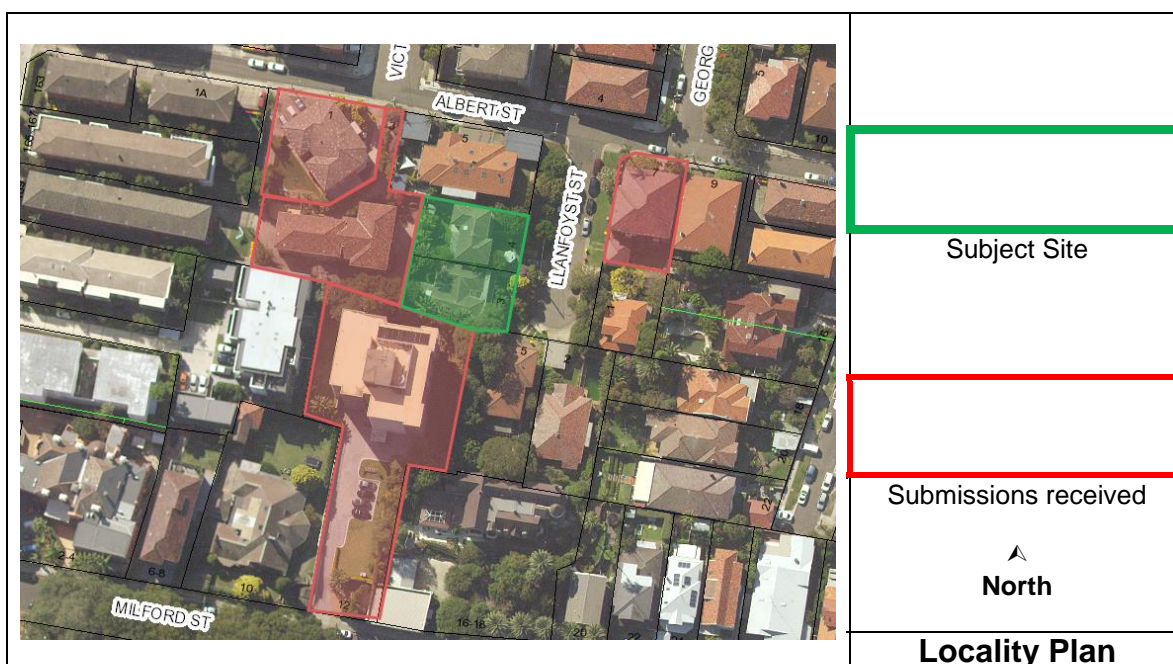
D19/23

10. The proposed development fails to demonstrate how adequate view sharing and results in unreasonable view loss impacts towards adjoining properties.
11. The proposed development has not provided sufficient information with regards to details within the Architectural Plans, specifically relating to accessibility, fencing heights and locations, Australian Standards, lift overrun, shadowing, storage, easements and Arboricultural Impact Assessment recommendations.

Attachment/s:

Nil

D19/23



D19/23

1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%.
- The development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings.

The proposal seeks development consent for the demolition of all structures, lot amalgamation and construction of a four (4) storey Residential Flat Building (RFB) with basement car parking, landscaping and associated site works. Specifically, the development comprises the following:

- **Basement**
 - Driveway access via Llanfoyst Street.
 - 15 car parking spaces, including 2 visitor and 3 accessible.
 - Garbage room, accessed internally from the front of the site.
 - Accessible pedestrian entry leading to a lift, service room and pump room.
- **Ground level**
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street. Balconies on the two end units wrap around the side and rear.
 - A lobby area provides a lift to upper and lower levels with stair access to upper levels.
- **Level 1**
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street
 - A lobby area provides lift and stair access to upper levels.
- **Level 2**
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street
 - A lobby area provides lift and stair access to upper levels.

- Level 3
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street
 - A lobby area provides lift and stair access to upper levels.

The key issues associated with the proposal relate to:

- Floor Space Ratio
- Setbacks and Separation
- External Wall Height
- Amenity
- Earthworks
- Landscape
- Car and Motorcycle Parking
- Bicycle Parking
- Streetscape Presentation
- View Impacts
- 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 5 June 2023.

2. Site Description and Locality

The subject site is known as 3 & 4 Llanfoyst and is legally described as Lot 1 & Lot 3 in DP 449211. The site is a rectangular parcel of land, with a northern boundary of 26.46 metres, a southern boundary of 27.24 metres, a combined eastern boundary of 29.63 metres and a western boundary of 27.70 metres providing a total site area of 784.5m². The site is relatively steep, with falls to the south and east. The site has a fall of 2.35 metres (RL 60.98 AHD to RL 58.63 AHD) from north to south along the Llanfoyst Street frontage and another fall of 6.65 metres (RL 64.95 AHD to RL 58.30 AHD) from west to east through the centre of the site.

Figures 1-3 outline the location and context of the site.

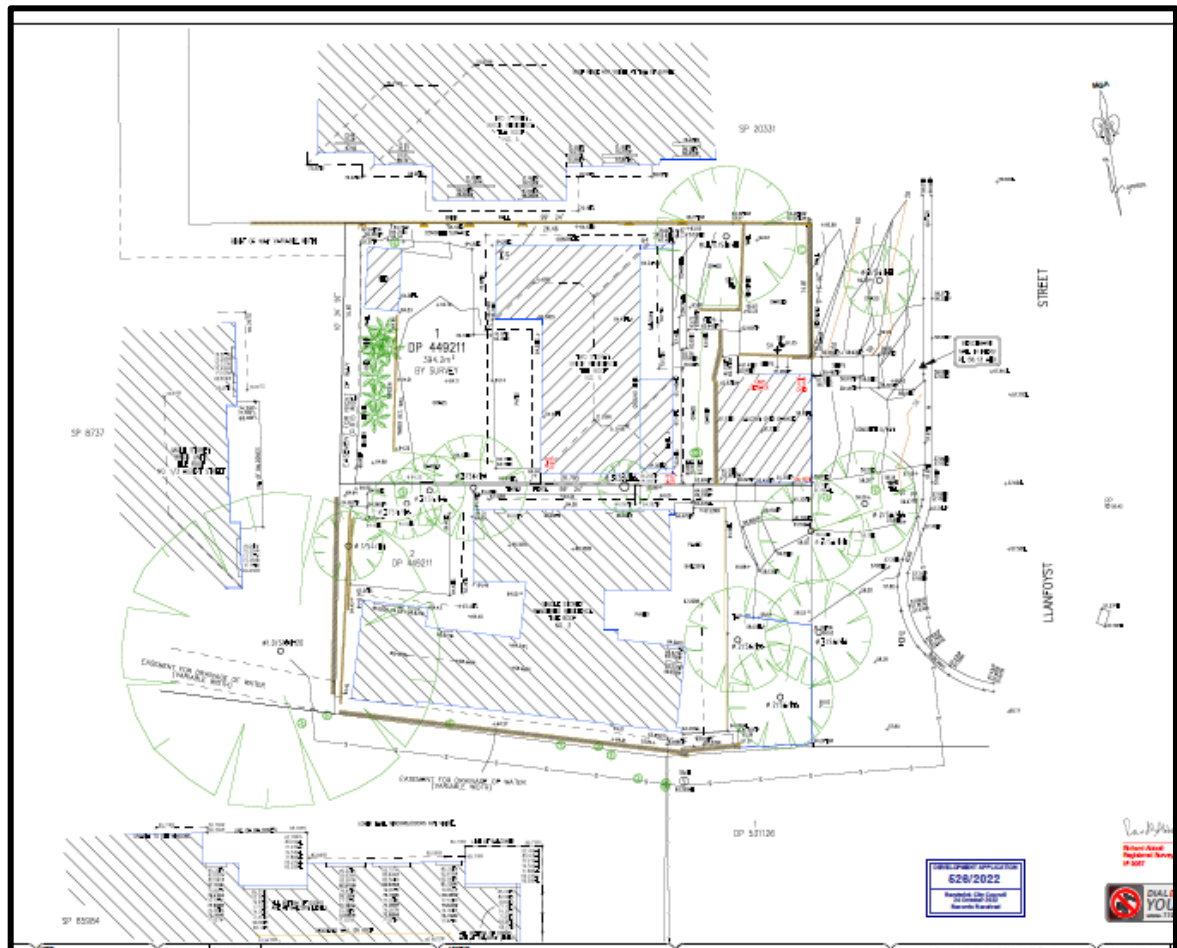


Figure 1: Survey Plan (Source: TSS Total Surveying Solutions).

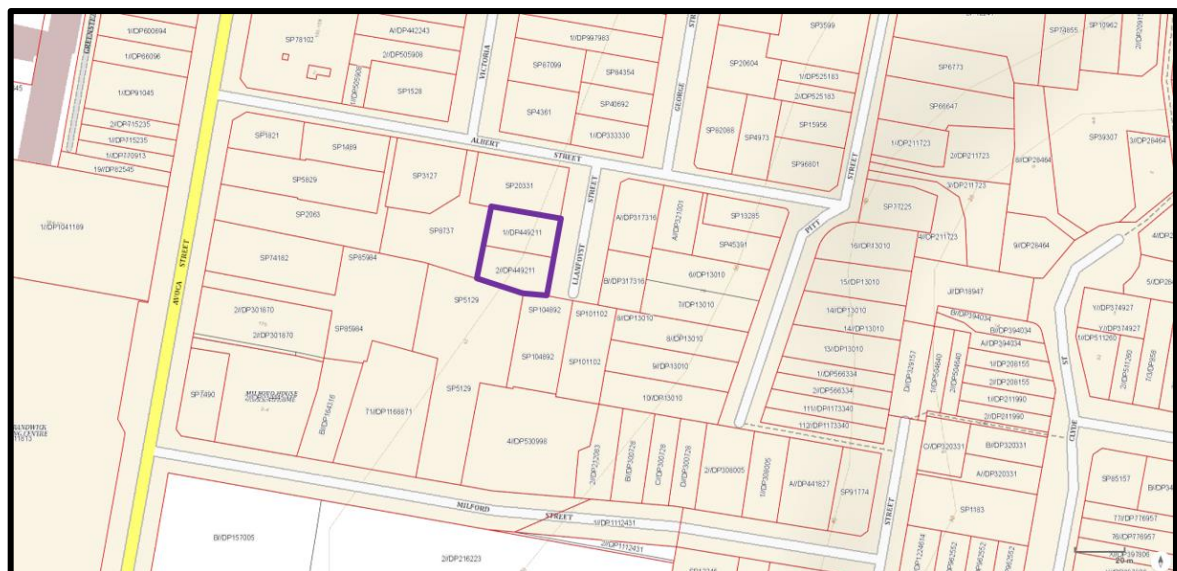


Figure 2: Site Locality Plan Demonstrating the Development Site Outlined in Purple (Source: NSW Planning Portal).

D19/23

D19/23

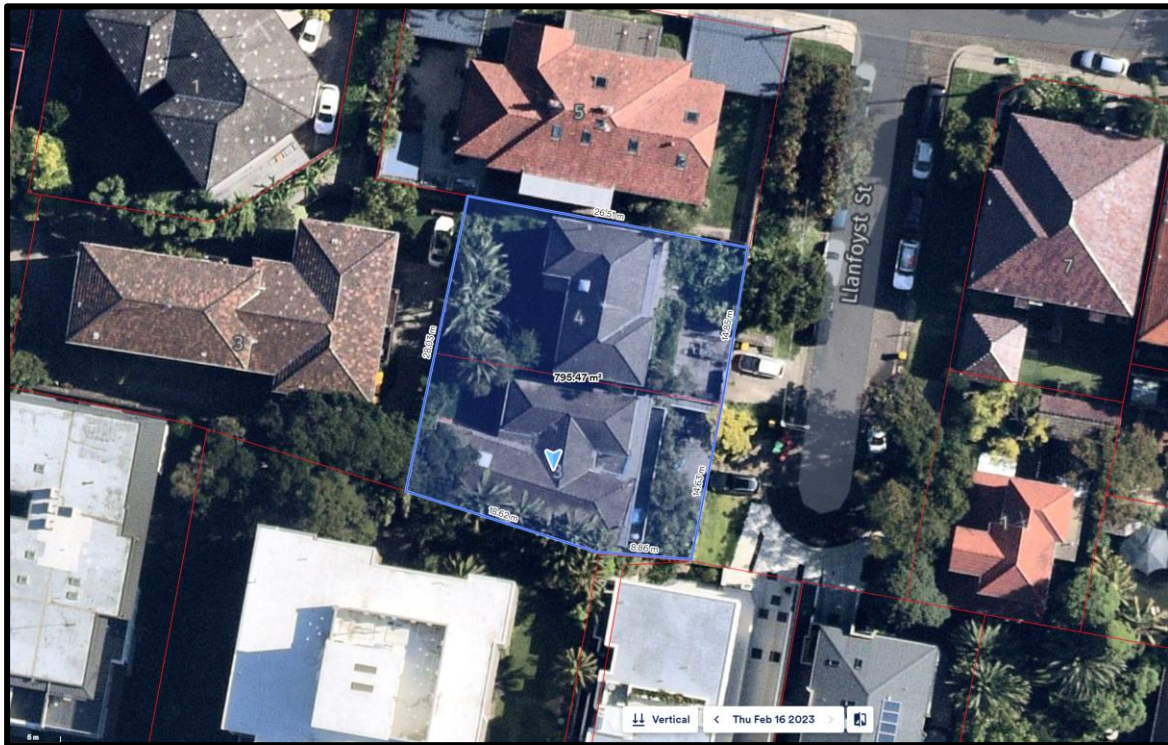


Figure 3: Location Plan Demonstrating the Site Area Hatched in Blue (Source: Nearmap).

The site is occupied by a pair of detached dwellings, each with a tiled pitched roof. At the front of each dwelling is relatively dense landscaping, which partially obscures each dwelling when viewed from the street. No. 4 Llanfoyst Street is a two storey dwelling which currently has a double garage fronting the street, with two separate roller doors. Internally, this property has four bedrooms. Above the street-front garages is a terrace area, with two east-oriented balconies from the Ground and First Floor levels, to take advantage of the water views to the east. At the rear of this dwelling is a grass area, with a garden shed and perimeter landscaping. No. 3 Llanfoyst Street is a single storey dwelling which currently has three bedrooms with a single garage fronting Llanfoyst Street. In response to the steep topography, this property is setback beyond stairs and a paved front terrace area. At the rear of this dwelling is a grass area.

This part of Randwick is characterised by two to four-storey residential flat buildings of various ages and styles, as well as traditional detached dwellings. Many nearby residential flat buildings contain off-street parking in external garages or integrated basement parking.



Figure 4: Site Image of 3 & 4 Llanfoyst Street (Source: Randwick City Council).

3. Relevant history

- On 11 November 2020, DA/619/2020 was lodged for the demolition and construction of a four storey residential flat building with basement parking at No. 3 Llanfoyst Street.
- On 31 December 2020, DA/718/2020 was lodged for the demolition and construction of a four storey residential flat building with basement parking at No. 4 Llanfoyst Street.
- Following a deemed refusal, a Class 1 appeal of both applications was heard by the Land & Environment Court (Zhang v Randwick City Council [2022] NSWLEC 1386). An amended scheme which included a shared basement car park presented as part of this appeal was approved by the Court on 20 July 2022.

4. Proposal

The proposal seeks development consent for the demolition of all structures, lot amalgamation and construction of a four (4) storey Residential Flat Building (RFB) with basement car parking, landscaping and associated site works. Specifically, the development comprises the following:

- Basement
 - Driveway access via Llanfoyst Street.
 - 15 car parking spaces, including 2 visitor and 3 accessible.
 - Garbage room, accessed internally from the front of the site.
 - Accessible pedestrian entry leading to a lift, service room and pump room.
- Ground level
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street. Balconies on the two end units wrap around the side and rear.

- A lobby area provides a lift to upper and lower levels with stair access to upper levels.
- Level 1
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street
 - A lobby area provides lift and stair access to upper levels.
- Level 2
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street
 - A lobby area provides lift and stair access to upper levels.
- Level 3
 - One X two (2) bedroom (adaptable) unit and two X three (3) bedroom units. Each unit contains an open plan living/kitchen/dining area, with balconies fronting Llanfoyst Street
 - A lobby area provides lift and stair access to upper levels.

5. Notification

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

- 4/7 Albert Street, Randwick
- 3/1 Albert Street, Randwick
- 12 Mildford Street, Randwick
- 1/1 Albert Street, Randwick
- 3 Albert Street, Randwick

Note: The submission lodged from both 1 and 3 Albert Street included a petition with 17 signatures.

Issue	Comment
Traffic and Parking	Agree. Refer to key issues discussion and reasons for refusal.
View Loss	Agree. Refer to key issues discussion and reasons for refusal.
Building Height	Agree. Refer to key issues discussion, 4.6 variation request and reasons for refusal.
Landscaping and Impact on Existing Vegetation	Agree. Refer to key issues discussion and reasons for refusal.
Privacy and Amenity	Agree. Refer to key issues discussion and reasons for refusal.
Rubbish & Garbage Collection Area	Agree. Refer to key issues discussion and reasons for refusal.
Late Notification	The proposed development was notified for a period of 14 days between 07/11/22 – 21/11/22 in accordance with Council's Community Engagement Strategy.
Floor Space Ratio is Excessive	Agree. Refer to key issues discussion and reasons for refusal.
Insufficient information	Agree. Refer to key issues discussion and reasons for refusal.
Non compliance with ADG Provisions	Agree. Refer to key issues discussion and reasons for refusal.

Issue	Comment
Solar Access	Agree. Refer to key issues discussion and reasons for refusal.
Communal Open Space	Agree. Refer to key issues discussion and reasons for refusal.
Amenity of Occupants	Agree. Refer to key issues discussion and reasons for refusal.
Property Value	Whilst Council understands concerns, property value is not a consideration under Section 4.15 of the <i>Environmental Planning and Assessment Act 1979</i> .

6. Relevant Environment Planning Instruments

6.1. SEPP 65 - Design Quality of Residential Apartment Developments

The proposed development is for the construction of a four storey Residential Flat Building, 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 Advisory Panel ("DEAP") and the DEAP 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 3**). In summary, the development does not demonstrate compliance with the objectives of the ADG in relation to; setbacks and separation, communal open space, deep soil area, solar access, balcony areas, balustrades, storage areas, car, motorcycle and bicycle parking and views. 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: According to Council's Development Engineer, the proposal fails to comply with the required number of parking spaces (refer to **Appendix 1**).

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

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

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

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

Assessing officer's comment: Ceiling heights appear to comply.

- (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 not been given to the SEPP 65 design quality principles and the ADG design criteria (refer to **Appendix 1 & 4**), 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.

The proposed development does not seek to use the bonus FSR which could be obtainable under the SEPP, which allows up to 0.5:1 additional FSR provided that at least 20% of the dwellings are proposed as affordable dwellings.

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. The remediation of land provisions are relevant in this instance.

Chapter 4, Section 4.6 of the SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on land and whether

the site is suitable for residential development. The historical use of the site is for residential purposes, as are surrounding uses, therefore it is not anticipated that the site is potentially contaminated.

The owners have advised that as the long-term use of the site has been residential, the site is unlikely to be contaminated. This was accepted by Commissioner Dickson in the recent judgement for the site (*Mark Zhang v Randwick City Council [2022] NSWLEC 1120*) at 4(2). On this basis, further investigation is not considered necessary.

Furthermore, the subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. Accordingly, noting restricts Council, under the SEPP, from consenting to the carrying out of the development subject to the appropriate conditions of consent.

6.5. SEPP (Biodiversity and Conservation) 2021

The Biodiversity and Conservation SEPP came into force on 02 March 2022. The new Biodiversity and Conservation SEPP shall replace the SEPP (Vegetation in Non-rural Areas) 2017, with Chapter 2 of the new SEPP applicable to the proposed development. There are no general savings and transitional provisions under the new SEPP and therefore the applicable is determined under the new SEPP (Biodiversity and Conservation) 2021. As such, consideration of the new Biodiversity SEPP has been undertaken in accordance with the provisions of Section 4.15 of the Act.

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

6.6. SEPP (Transport and Infrastructure) 2021

SEPP (Transport and Infrastructure) 2021

Chapter 2, Part 2.3 Division 5 Section 2.48 of the SEPP outlines requirements for development likely to affect an electricity transmission or distribution network, and states the following:

- (1) *This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*
 - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out—*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*
 - (c) *installation of a swimming pool any part of which is—*
 - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
 - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
 - (2) *Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must—*
 - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*

- (b) take into consideration any response to the notice that is received within 21 days after the notice is given.
- (3) Subsection (2) does not apply to development specified in subsection (1)(b) if the development involves only one or more of the following—
- (a) internal alterations to a building,
 - (b) a change of use of an existing building,
 - (c) a change to the hours of operation specified in the development consent,
 - (d) a subdivision that does not involve construction work.

Specific reference is given to section 2.48(1)(b)(ii). Council note that there are exposed overhead electricity lines within the road reserve adjacent to the subject site. Refer to **Figure 5** below.



Figure 5: Street View Looking South Towards the Development Site Demonstrating the Location of Powerlines Along Llanfoyst Street (Source: Google Street View).

A referral to Ausgrid was issued via the NSW Planning Portal, however at the time of writing this report, comments were still outstanding.

It is recognised that as a result from a Council meeting on 27/05/2022, it was resolved that all infrastructure must be relocated underground. Refer to Engineering Referral response.

6.7. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.9:1	1.55:1 (1216m ²)	No
CI 4.3: Building height (max)	12m	11.6m	Yes

6.7.1. Clause 4.4 Floor Space Ratio

The proposal does not comply with the development standard for floor space ratio. It is noted that the variation request does not satisfy the requirements of clause 4.6, discussed further below.

The maximum permitted FSR under the RLEP 2012 is 0.9:1. Given the site area the permissible GFA is 706.05m². The proposed GFA is identified as 1216m² (1.55:1) which is a variation of 72%.

6.7.2. Clause 4.6 - Exceptions to development standards

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

6.7.3. Clause 6.2 Earthworks

The RLEP states that *before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*

- a. *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- b. *the effect of the development on the likely future use or redevelopment of the land,*
- c. *the quality of the fill or the soil to be excavated, or both,*
- d. *the effect of the development on the existing and likely amenity of adjoining properties,*
- e. *the source of any fill material and the destination of any excavated material,*
- f. *the likelihood of disturbing relics,*
- g. *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- h. *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposal does not meet the objectives of Section 4.12, Earthworks under the RDCP 2013 being:

- (i) *To maintain or minimise change to the natural ground levels.*
- (ii) *To ensure excavation and backfilling of a site do not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining properties.*
- (iii) *To enable the provision of usable communal or private open space with adequate gradient.*
- (iv) *To ensure earthworks do not result in adverse stormwater impacts on the adjoining properties.*

The amount of excavation is considered excessive and in breach of Section 4.12 of the RDCP 2013 control (i) which requires:

“any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated and the site gradient is too steep to reasonably construct a building within this extent of site modification. (This does not apply to swimming or spa pool structures).”

The proposal does not conform with Section 4.12 of the RDCP 2013, control (iv) where the outer edge of any excavation requires a minimum setback of 900 mm from the side boundaries.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.9:1	1.55:1	509.95m ²	72

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

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

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

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

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

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

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

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase

“environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area. The relevant clauses in the LEP which relate to urban character and built form are:

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

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

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

The proposal will continue to contribute to the eclectic mix of permissible uses in the R3 zone. The proposal also remains compatible with the envelope of nearby developments recently approved and constructed. Importantly, this includes the previously approved residential flat building on the subject site (DA 619/2020 and DA/718/2020), which had a maximum roof height of RL 74.93 AHD and setbacks to match the proposal. In other words, the height and envelope is consistent with these buildings and compatible with the area's desired future character as per the Court judgement of SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112. In this judgement, Clay AC notes:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

This approach was confirmed in the Appeal by Preston CJ, that the desired future character should be informed by the nearby and future development, and not limited by the development standards. Indeed, the Chief Judge linked this to Clause 4.6 and stated at [60], inter alia:

...the application of cl 4.6 of WLEP to the height and FSR development standards supports a broader not narrower construction of the term 'desired future character used in those development standards. Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to particular development (cl 4.6(1)(a)). However, cl 4.6 does not apply to a development standard that is expressly excluded from the operation of the clause (cl 4.6(2)). Neither the height of buildings development stand in cl 4.3 nor the FSR development standard in cl 4.4 is expressly excluded from the operation of cl 4.6. This contemplates that development that contravenes the height and development standards may be approved under cl 4.6.

*The subject site is in an area which includes several other residential flat buildings, many of which are between three and four storeys in height (see **Figure 2**).*



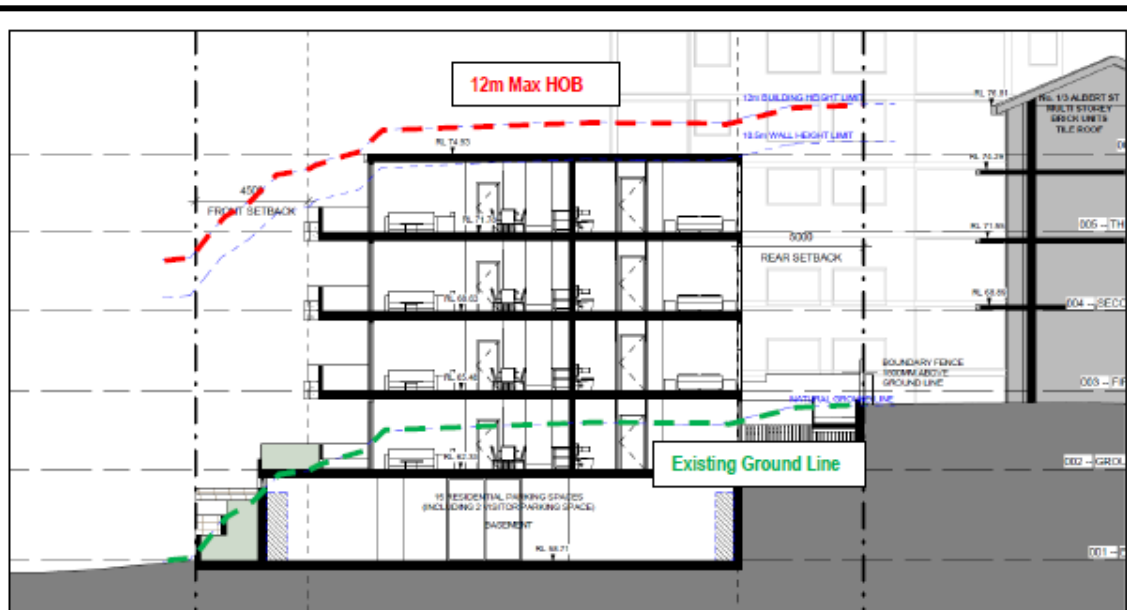
Figure 6: Figure 2 Referenced in the Applicant's 4.6 Variation request (Source: GSA Planning).

Desired future character is also formed by recent approvals. A review of Council's online Clause 4.6 register indicates two development consents breaching the FSR development standard within vicinity of the site. These included DA 725/2017 for the 'demolition of all structures on site and construction of a part two and part three storey multi-dwelling housing development comprising 4 dwellings, car parking for 8 vehicles and associated site and landscaped works' at No. 2 Llanfoyst Street, Randwick, with a 4% FSR exceedance. The main justification was the proposal is compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.

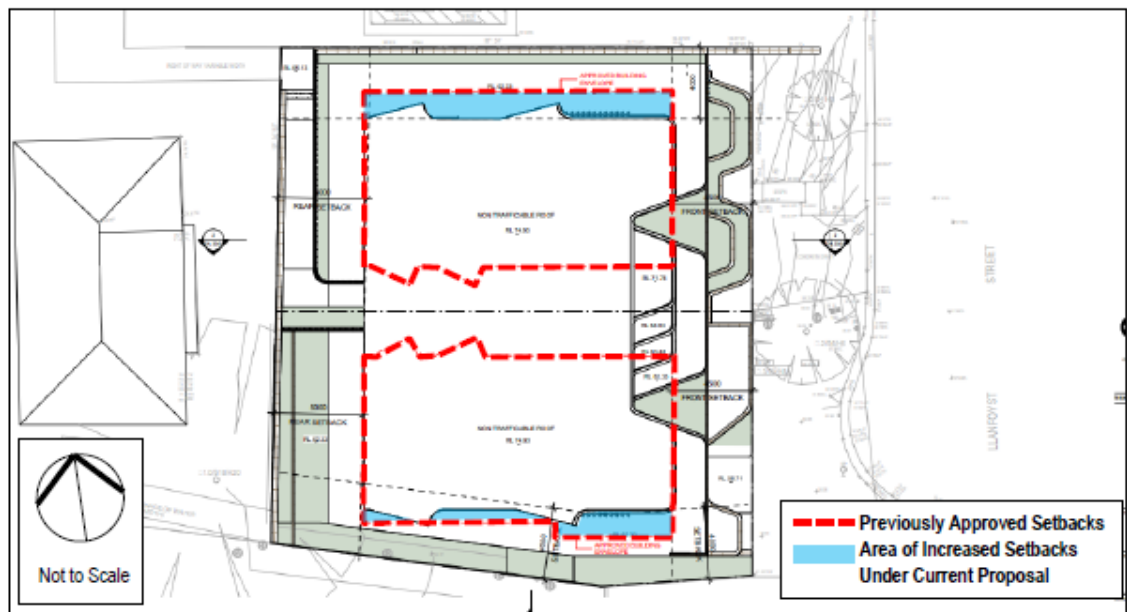
On 12 November 2020, the Randwick Local Planning Panel (RLPP) approved DA 402/2020 for the 'demolition of existing structures and construction of a part 4 and part 5 storey residential flat building comprising 20 units with middle courtyard between two built forms, 2 levels of basement/semi-basement parking, strata subdivision, landscaping and associated works' at No. 21 Cook Street, Randwick, with a 15.56% FSR exceedance (and a 6% building height exceedance). The main justification was the minor exceedance had acceptable amenity impacts.

*It is noted that, these DA's had a much smaller breach than the proposed development, nevertheless these are the only comparable breached within vicinity of the site. Given the above, the building envelope of two existing development consents relating to the subject site (DA 619/2020 and DA 718/2020) must be taken into consideration. As outlined throughout the SEE, the previous development consents do not breach the height of building development standard, however, have a wall height and setback (front and side) including building separation non-compliance. The proposal is consistent with the desired future character as all setbacks will be an improvement on the recent approvals of No. 3 and No. 4 Llanfoyst Street (DA 619/2020 and DA 718/2020 respectively) and the proposal will also comply with the 12m height of buildings development standard at the street frontage which is clearly consistent with what Council is anticipating from the street (see **Figures 3 and 4**).*

D19/23



Source: OROSI Architecture

Figure 3: Proposed Height at Cross Section 1

Source: OROSI

Figure 4: Proposed Site Plan

Figure 7: Figures 3 & 4 Referenced in the Applicant's 4.6 Variation request (Source: GSA Planning).

*The consolidated site provides some advantages in terms of bulk and scale. For instance, the space along the shared boundary of the middle of the previous lots can be utilised for built form where it would previously have been required for a side setback. This increases the GFA that can be provided on the site without resulting in any amenity impacts or additional height. In *Moskovich v Waverley Council* [2016] NSWLEC 1015 at [60], the argument of discounting the space required for setbacks had a site not been consolidated was accepted:*

...the sites steeply sloping topography, size, two street frontages and its context which includes existing buildings of greater height and bulk than the proposal as well as the amalgamation of two allotments result in a large amount of the floor area being below the Bondi Road level and within a setback area between buildings that would be required if the site remained as two allotments, which were developed separately. So although there is a significant exceedance in the numerical FSR control a large amount of this floor area would not add to bulk or result in impacts greater than that from a complying development. The floor area is contained within a bulk and form of development which complies with the height control (other than the lift over run) and is appropriate to its context with acceptable impacts. (emphasis added)

Therefore, if the GFA in the space between the buildings usually required for setbacks was excluded from the total calculation 68.5, the total GFA would be 1147m².

Accordingly, the FSR, as viewed from surrounding areas, is considered consistent with the desired future character.

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

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

The proposed residential flat building will be architecturally designed to have a contemporary style. This ensures that the proposal provides a well-articulated built form which contributes to visual interest when viewed from Llanfoyst Street and neighbouring properties. The proposed building facades incorporates articulation breaks and openings, particularly at the front and rear facades.

The proposal will continue to provide an environmentally sensitive design, with natural cross-ventilation and solar access achieved for 66% and 58% of units respectively. The proposed residential flat building will also meet the requirements under State Environmental Planning Policy (SEPP) BASIX – 2004 and the majority of provisions under SEPP 65 – Design Quality of Residential Apartment Development.

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

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

The subject site is neither a heritage or contributory item, nor does it directly adjoin any items of heritage significant. The surrounding neighbourhood, including the subject site, is all zoned R3 Medium Density Residential. The R3 zone is characterised by a variety of detached dwellings, multi-unit housing and residential flat buildings. The proposal is unlikely to affect the amenity of nearby heritage items and will result in a contemporary style, residential flat building use.

The proposal results in a compliant height of building and will continue to be perceived as four residential storeys above a podium basement as the previously approved residential flat buildings under DA 619/2020 and DA 718/2020. This remains a compatible scale and character with the nearby provides an appropriate transition in scale to the adjoining medium density development.

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

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

In our opinion, given the proposal will maintain the approved building height as well as the increase setbacks from those previously approved under DA 619/2020 and DA 718/2020, the proposal will not result in unreasonable impacts on adjoining or nearby properties in respect of views, privacy or overshadowing. The majority of the location of the additional floor space is located along the shared boundary of the middle of the previous lots that was previously required for a side setback which does not add to the visual bulk of the residential flat building.

The area of non-compliance will not affect solar access for neighbouring properties and their private open space. As demonstrated by the shadow diagrams prepared by OROSI (submitted separately), the proposal will not result in a discernible increase in shadowing to the adjoining properties, given it will generally maintain the previously approved envelope.

In terms of view loss, it should be noted that we have not had the opportunity to inspect the surrounding properties. However, given the proposal will retain the approved maximum building height at RL 74.93 AHD, it is unlikely that the proposed additional floor space located between the two previously approved buildings will impact on views from surrounding properties.

Notwithstanding the proposed FSR non-compliance, compliance with visual and acoustic privacy has been achieved. All primary habitable rooms along each of the side boundaries have included privacy screens or angled windows to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space.

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

Accordingly, although the proposal will exceed the FSR control, this is unlikely to have any significant adverse impacts.

Assessing officer's comment: As discussed below, the reasons stated in the applicant's written request are not concurred with. It is considered that the proposal does not uphold objectives a) and d) of the floor space ratio development standard. As such, the applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

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

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

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in Wehbe. There are a number of environmental planning grounds that justify the FSR in this instance including consistency with the context; infill between previously approved buildings; good design and amenity; and Environmental Amenity.

Consistency within the Context

In Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161, Commissioner O'Neill acknowledges that the desired future character cannot simply be

derived from controls, rather should take into account surrounding developments at [44,46]:

The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (see Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [62]-[63]). For these reasons, the desired future character of an area is not defined and fixed by the development standards that determine the building envelope for a site. Development standards that determine building envelopes for a locality can only contribute to shaping the character of that locality (SJD DB2 at [53]-[54] and [59]-[60]).

...

I accept the applicant's experts' evidence that there is a unique character in the vicinity of the site created by the existing four storey residential flat buildings, including the four storey residential flat building adjoining the sub-precinct identified by the applicant's experts in the vicinity of the site.

As in this case, the surrounding area has an eclectic character with a number of large residential flat buildings and dwellings in the immediate vicinity which also appear to breach the FSR development standard. This is further demonstrated in the desired future character section and Figures 2 - 4 above. Consistency in the context was recognised as an environmental planning ground in Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097 where Commissioner O'Neill states at [42] that:

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

The R3 Medium Density Residential zoning anticipates residential flat development such as is being proposed. It is noted that the existing detached dwellings are somewhat inconsistent with this emerging character. Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality.

Infill Between Previously Approved Buildings

The consolidated site provides some advantages in terms of bulk and scale. As discussed, the space along the shared boundary of the middle of the previous lots can be utilised for built form where it would previously have been required for a side setback.

*This increases the GFA that can be provided on the site without resulting in any amenity impacts or additional height. In *Moskovich v Waverley Council* [2016] NSWLEC 1015 at [60], the argument of discounting the space required for setbacks had a site not been consolidated was accepted. It is noted that the current scheme would increase the respective side setbacks, reducing bulk at that point.*

Good Design and Amenity

The proposal promotes good design and amenity in accordance with the object of the EPA Act in Clause 1.3(g). The amenity of surrounding sites compared to a compliant FSR will be preserved as discussed in the development standard's Objective (d) above.

The proposal provides a well-articulated, quality built form which will not present as an overdevelopment on the site. The recessed residential levels as well as balconies along the front elevation will provide visual interest and reduce the perceived bulk. The increased side setbacks further reduce perceived bulk of the proposed development when compared with the recent development consent of DA 619/2020 and DA 718/2020.

Environmental Amenity

Our assessment has demonstrated the proposal will preserve neighbours' privacy, solar access and views, as per the previously approved residential flat buildings on the site. Despite the proposed additional floor space, this is located in the shared boundary of the middle of the previous lots which was previously required for side setbacks thus maintaining a similar relationship with neighbouring properties.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and objects of the EPA Act.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

Assessing officer's comment:

In the written request, the Applicant has addressed how the FSR non compliance is accommodated within an envelope that contains increased setbacks to that as what was originally approved. Furthermore, the Applicant states that the proposal is consistent with the objectives of the R3 zone as well as maintaining consistency with the context of the locality.

The Applicant has not adequately addressed how compliance with the development standard is unreasonable and unnecessary in this case. In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention. Furthermore, Council is of the opinion that the entire building envelope is being altered given the changes proposed, and therefore it cannot be argued that the proposed development is the same as originally approved.

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 proposal does not retain the overall appearance of the approved design, it does not retain the same height, and therefore does not retain the same building envelope, and will appear as a four storey development.

The proposed floor space ratio non-compliance of 1.55:1 is substantially higher than the 0.9:1 permitted at the subject site and the neighbouring properties. The non-compliance results in a building that is greater in bulk and scale than the predominant form of development in the immediate locality and substantially greater than what is permissible on surrounding sites. Therefore, the size and scale of the development is not compatible with the desired future character of the locality.

- (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: Not Applicable.

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

The 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.*

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

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

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the R3 Medium Density Residential zone, as discussed below:

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

Response: The proposed residential flat building will provide for the housing needs of the community by providing 12 units, which will form part of a residential flat building consistent within the R3 zone.

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

Response: The proposal will provide a mixture of two- and three-bedroom units within a residential flat building, which will contribute to the variety of housing types in this zone.

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

Response: N/A

Objective: 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.

Response: The proposal will present as four storeys above basement parking, with the proposed residential storeys recessed. This design approach will recognise the desirable elements of the streetscape by providing a well-designed contemporary building which remains consistent with the previous approvals on the site (DA 619/2020 and DA 718/2020) and those for nearby properties on Llanfoyst Street. The proposal remains compliant with the building height control, which ensures the height and scale of the proposal is consistent in the context.

Objective: To protect the amenity of residents.

Response: The proposal will maintain the approved building height as well as the increase setbacks from those previously approved under DA 619/2020 and DA 718/2020, and thus will not result in unreasonable impacts on adjoining or nearby

properties in respect of views, privacy or overshadowing. The majority of the location of the additional floor space is located along the shared boundary of the middle of the previous lots that was previously required for a side setback which does not add to the visual bulk of the residential flat building. The area of non-compliance will not affect solar access for neighbouring properties and their private open space. As demonstrated by the shadow diagrams prepared by OROSI (submitted separately), the proposal will not result in a discernible increase in shadowing to the adjoining properties, given it will generally maintain the previously approved envelope. All primary habitable rooms along each of the side boundaries have included privacy screens or angled windows to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space. Accordingly, the proposal will protect the amenity of surrounding residents and future occupants.

Objective: To encourage housing affordability.

Response: The proposal will encourage housing affordability by providing 12 additional units, which will increase housing supply in the locality.

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

Response: N/A

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

Assessing officer's comment: As discussed above and in 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 not allow for the orderly use of the site and there is 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 may not be granted for development that contravenes the FSR development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in **Appendix 4**.

Note: Clause 6A of SEPP 65 states:

(1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following:

- (a) visual privacy,*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.*

(2) If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

(3) This clause applies regardless of when the development control plan was made.

Consequently, where the 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 3**) 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 4 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is 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(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 applicant states that the proposed gross floor area is 1,216m² which results in a FSR of 1.55:1. This exceeds the maximum FSR by 509.95m² or 72%.

The written request under Clause 4.6 of the RLEP 2012 fails to demonstrate sufficient environmental planning grounds to justify the variation and that the variation is in the public interest by being consistent with the zone objectives and standard.

The proposed development is inconsistent with the objectives of Clause 4.4 of the RLEP 2012 as follows:

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

The additional FSR provides for additional bulk and mass that conflicts with the desired future character of the locality, evident by breaches to other planning controls including setbacks, separation, landscaped area and car parking, and amenity issues within and to adjoining properties including view loss.

“(c) to ensure that buildings are well articulated and respond to environmental and energy needs,”

The proposed development presents a front façade that is not consistent with the streetscape in terms of design or scale, and the proposal does not satisfy the solar access requirements to apartments within the site.

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

The proposed development will adversely impact the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, view loss, and overshadowing as a result of the proposed design, size and scale.

Pursuant to Clause 4.6 of the RLEP 2012, the applicant has not adequately demonstrated that:

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

- Setbacks and Separation

The proposal does not satisfy Objective 3F-1 of the ADG as the minimum separation between habitable rooms and balconies at all floor levels is not achieved to the northern, western and southern boundaries. This results in adverse visual and acoustic privacy impacts to the adjoining properties and does not allow for adequate sunlight access and open space on the site.

The proposal does not satisfy Objective 4H-1 of the ADG relating to acoustic privacy to neighbouring properties due to the lack of separation to adjoining properties.

The proposal is inconsistent with the R3 Medium Density Zoning objective under the Randwick Local Environmental Plan 2012 to protect the amenity of residents.

The proposal is inconsistent with the setbacks objectives under Section 3.4 of the Randwick Comprehensive Development Control Plan 2013 (RCDCP 2013) 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 RCDCP 2013 as the proposal does not provide additional side setbacks over those specified in control (i), so as to provide opportunities for landscaping; 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 proposed basement level setbacks to the side boundaries are considered unacceptable in terms of its siting to adjoining properties. The proposed setbacks do not align with the objectives of the control, which is to provide deep soil planting and the insufficient setbacks to the side boundaries reduces the ability to soften the development.

The proposal conflicts with Section 3.4.1 Front Setbacks control (i) and (iv) as the front setback is not consistent with the streetscape and the garbage storage room is built on the front boundary line.

- External Wall Height

The proposal is not consistent with Section 4.4 Control (i) of RCDCP 2013 which limits the maximum external wall height of 10.5m where a site is subject to a 12m building height limit. The application states that a wall height of 11.6 metres is provided.

- Amenity

The proposal does not satisfy Objective 3D-1 of the ADG which requires development to provide a communal open space area equal to 25% of the site area, which achieves a minimum of 50% direct sunlight to the principal area. The development provides no communal open space area.

The proposal has not demonstrated that it satisfies Objective 3E-1 of the ADG which requires a deep soil area of 7% of the site area with a minimum dimension of 3 metres. Areas less than 3 metres in dimension have been included in the deep soil area calculation.

The proposal does not satisfy Objective 4A-1 of the ADG regarding solar access, as less than 70% of units achieve a minimum of 2 hours solar access on 21 June between 9am and 3pm.

The applicant has stated that 7 units or 58% of units meet the solar access requirements of Objective 4A-1, however the view from the sun solar access diagrams submitted show that the ground and first floor units may not achieve a minimum of 2 hours solar access on 21 June between 9am and 3pm.

The proposal does not satisfy Objective 4E-1 of ADG which requires 3 bedroom apartments to have a primary balcony area of at least 12m².

The proposal does not satisfy Objective 4E-3 of the ADG as the balustrades to the front facing balconies are proposed to be clear glass, rather than solid or partially solid balustrade to allow for a range of uses on the balcony including clothes drying or BBQ areas.

The proposal has not demonstrated that Objective 4G-1 of the ADG is satisfied, which requires storage areas of 8m³ for two bedroom units and 10m³ for three bedroom units. Storage areas within the basement level are not indicated on the submitted plans.

The proposal has not demonstrated compliance with Section 5.1 Solar access and overshadowing of RCDGP 2013 in relation to maintaining solar access to neighbouring dwellings. The shadow diagrams submitted do not include the properties immediately adjoining to the south and do not differentiate between existing and proposed overshadowing.

The proposal does not satisfy the objectives of Section 5.3 Visual Privacy of RCDGP 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 RCDGP 2013 to ensure a high level of amenity by providing for reasonable level of acoustic privacy for dwellings and neighbouring properties.

- Earthworks

The proposal does not meet the objectives of Section 4.12, Earthworks under the RCDGP 2013 being:

- (i) *To maintain or minimise change to the natural ground levels.*
- (ii) *To ensure excavation and backfilling of a site do not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining properties.*
- (iii) *To enable the provision of usable communal or private open space with adequate gradient.*
- (iv) *To ensure earthworks do not result in adverse stormwater impacts on the adjoining properties.*

The amount of excavation is considered excessive and in breach of Section 4.12 of the RCDGP 2013 control (i) which requires

“any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated and the site gradient is too steep to reasonably construct a building within this extent of site modification. (This does not apply to swimming or spa pool structures).”

The proposal does not conform with Section 4.12 of the RCDGP 2013, control (iv) where the outer edge of any excavation requires a minimum setback of 900 mm from the side boundaries.

- Landscape

Landscaping along the front boundary is restricted by the building footprint and location of the garbage room within the front setback.

The proposed does not satisfy the landscaped area requirement under Part 2.2 of the RCDGP 2013, Control 2.2.1 which requires a minimum 50% of the site area to be landscaped. The applicant states that 45.3% of the site will be landscaped.

The non-compliance with landscaped area is a result of the proposed building footprint and excessive FSR.

- Car and Motorcycle Parking

Section 5.3 Part B7 of RCDGP 2013 specifies the following parking rates applicable to the subject site.

For residential component

- 1.2 spaces per 2 bedroom unit
- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units

The residential component includes 12 units comprising of 4 x 2 bedroom and 8 x 3 bedroom dwellings, thereby generating a parking demand of 20 spaces (including 3 visitor spaces) when adopting the above rates.

As only 15 spaces are proposed there is a shortfall of 5 spaces (25%). The shortfall is excessive and is not supported by Council's Engineers.

The site is located within a locality that is experiencing a very high demand for on-street parking. Observations by the Development Engineer indicate that generally there is no on-street parking available in Llanfoyst Avenue at most times during the day due to this high demand.

Any impacts from parking shortfalls would therefore likely extend into the surrounding streets which is unacceptable.

Part B7 of the RCDGP 2013 states that motorbike parking is to be provided at the rate of 5% of the vehicle parking rate, resulting in a requirement of 1 space. Although this has been provided, the position of the motorbike space is unacceptable as it is located at the end of a blind aisle. This area is required for manoeuvring of vehicles entering and exiting the last 2 car spaces either side of the parking aisle.

- Bicycle Parking

Part B7 of RCDGP 2013 states that bicycle parking is to be provided at a rate of 1 space per 2 dwellings plus 1 visitor space per 10 dwellings, resulting in a requirement of 7 spaces for the development.

The submitted plans indicate no provision for bicycle parking and therefore the proposal does not meet the minimum requirements of the RCDGP 2013.

The shortfall, especially in the context of the vehicle parking shortfall, is unacceptable.

- Streetscape Presentation

The proposed front setback is dominated by the ground floor balconies which is not in keeping with the landscape setting of the street.

The proposed excavation results in excessive visual bulk and scale as the car park level is visible and results in a five storey building presenting to the street.

The overall scale of the proposal as viewed from Llanfoyst Street is not characteristic of the scale of development in the street. The front façade presents minimal solid vertical elements to break up the large expanse of full height glazing and glass balustrades to balconies.

- View Impacts

The View Impact Assessment prepared by AE Design and submitted with the application is dated 20/10/2021 and was prepared for the earlier development applications of DA/619/2020 for No. 3 Llanfoyst Street and DA/718/2020 for No. 4 Llanfoyst Street.

This view assessment illustrates a substantial district and ocean view loss from adjoining properties to the west.

A View Impact Assessment reflecting the current proposal has not been submitted with the application.

A comparison of the view loss resulting from the approved developments against the view loss resulting from the proposed development has not been provided.

View loss from adjoining and adjacent properties is impacted by the breaches to the FSR control under the RLEP, breaches to the wall height and setback controls under the RCDCP 2013, and breaches to the separation distances under ADG.

The applicant has not demonstrated that a more skillful design could not be achieved in order to improve view sharing.

- Insufficient Information

The Statement of Environmental Effects states that the basement is accessed from the upper levels via a shared lift and internal stairs. The architectural plans do not show stairs accessing the basement level.

Clarification of fence heights and the nature of construction is required as the plans are void of such details.

Clarification is required on the location of air conditioning system.

Clarification is required as to how the easement for the right of way along the western boundary is accessed from within the development site and if access is provided to the rear property.

The basement design incorporates a 3.8 metre wide adaptable parking spaces as per AS4299. In each case, it assumes a 2.4 metre width is needed for the physical vehicle, with the remaining space 1.4 metre being clear for persons entering/exiting the vehicle. In the current design, this 1.4 metre width is also serving secondary functions for vehicle manoeuvring. Specifically, to accommodate the mandatory 1 metre blind aisle requirement of AS2890.1, and to enable a vehicle exit manoeuvre. Clarification is required from a DDA consultant to confirm that these arrangements are acceptable.

The plans do not show a lift overrun. Details of the lift overrun is required to determine whether the height control is being breached and therefore may require a clause 4.6 variation.

The shadow diagrams submitted do not include the properties immediately adjoining to the south and do not differentiate between existing and proposed overshadowing

The applicant is to demonstrate compliance with the storage area requirements under ADG for each dwelling.

Clarification is required on whether there is adequate verge area along Llanfoyst Street available for bin placement of approximately 14-16 bins.

Clarification is required as to how the easement over No 4 Llanfoyst Street is being affected and the implications for this site given a deep soil landscaped area is shown over the ROW.

Clarification is required on whether the recommendations contained within the Arboricultural Impact Assessment prepared by Abnoba Arbor for No. 3 Llanfoyst Street dated 13.10.20 remains relevant to the proposed development.

10. Conclusion

That the application for the demolition of all structures and the construction of a four-story residential flat building and associated site works be refused for the reasons mentioned herein.

D19/23

Appendix 1: Referrals

1. Design Excellence Advisory 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.

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.

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

The applicant did not attend the meeting.

DA INFORMATION

Demolition of Existing Buildings, Lot Amalgamation and Construction of a Residential Flat Building.

LEP DCP Control TABLE			
LEP DESCRIPTION	COUNCIL STANDARD	PROPOSED	COMPLIANCE
Floor Space Ratio (Maximum)	0.9:1	1.55:1	No
Height of Building(Maximum)	12m	11.6m	Yes

Background:

- On 11 November 2020, a Development Application (DA 619/2020) was lodged with Randwick Council for demolition and construction of a four storey residential flat building with basement parking at No. 3 Llanfoyst Street.
- On 31 December 2020, a separate Development Application (DA 718/2020) was lodged with Randwick Council for demolition and construction of a four storey residential flat building with basement parking at No. 4 Llanfoyst Street.
- On 20 July 2022, following a deemed refusal of each of the abovementioned applications, a Class 1 appeal of the two DAs was heard by the Land & Environment Court (*Zhang v Randwick City Council* [2022] NSWLEC 1386). The amended scheme presented as part of this appeal was upheld by the Court on 20 July 2022, with a shared basement car park accessed by a single vehicle entry point.
- Located within local & special character area.
- DA/619/2020 was discussed at DEAP on 08 February 2021. The Panel does not support the scheme in its current form and believes a redistribution of GFA and reconfiguration of the floor-plans is required to improve the buildings amenity, reduce its impacts and contribution to the local streetscape. There are a number of elements the design which lend themselves to future amendments and additional floor space. Given these elements contribute to the overall bulk and scale of the development they should be removed or reassigned. The Panel would like to see the next iteration of the design.
- DA/718/2020 was not discussed at a face to face meeting. DEAP Report dated March 2020. The Panel does not support the scheme in its current form and believes a redistribution of GFA and reconfiguration of the floor-plans is required to improve the buildings amenity, reduce its impacts and contribution to the local streetscape.
- There are a number of elements the design which lend themselves to future amendments and additional floor space. Given these elements contribute to the overall bulk and scale of the development they should be removed or reassigned. The Panel would like to see the next iteration of the design.
- Both appeals were upheld – both discussed at the one proceeding.
- Class 1 appeal lodged 13/12/2022.

PANEL COMMENTS

1. Context and Neighbourhood Character
 - the quality and amenity of the public domain
 Insufficient setbacks and deep soil landscaping at the front and sides of the building do not provide the building with an adequate landscaping setting facing the public domain.
 The drawings do not show potential services required, such as fire hydrant booster assembly, which must be carefully incorporated to avoid visual clutter at the street front.
 The modulation of the ground floor street frontage could be improved by reducing the apparent length of horizontal ventilation openings.

D19/23

2. *Built Form and Scale*

The insufficient side setbacks create a bulky form with insufficient relief between neighbouring buildings..

3. *Density*

The proposal amounts to an increase in density at the expense of the neighbours' amenity.

4. *Sustainability*

The proposal's proximity to its neighbours compromises sustainable aspects such as landscaping, privacy and solar access

5. *Landscape*

The landscaping shown in front of the building is positioned on top of a concrete slab limiting deep soil root growth.

The large basement restricts deep soil landscaping around the building

Larger side setbacks would sustain landscaping which would provide privacy between the buildings.

6. *Amenity*

The large apartments are neatly planned. However, the insertion of additional floorspace creates large floor plates with a significant increase in perimeter windows that are too close to the side and rear neighbours, compromising their privacy. The number and size of the windows facing directly to the boundaries exacerbate the problem.

The building bulk resulting from non-compliant setbacks severely impacts neighbours' views.

There is insufficient solar access to the proposed apartments and the existing neighbours.

The "ground level" apartments are positioned 1-2 metres below ground and require excavation and retaining walls along the side and rear boundaries.

The common staircase above ground appears well lit.

There does not appear to be stair access to and from the street.

The waste strategy is unclear and bin room access could be more direct.

7. *Safety*

The escape route from the fire stair is unclear.

8. *Housing Diversity and Social Interaction*

There is little opportunity for social interaction, given the lack of communal space.

The stairwell is well-lit, encouraging its use and social interaction.

9. *Aesthetics*

- Architectural Design, Materials and Detailing

The modulated form provided by the approved two blocks is preferable to the proposed monolithic combined block.

SUMMARY AND RECOMMENDATIONS

The proposal is a bid for additional floor space with no redeeming features. 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 must be reduced and redesigned to afford proper privacy to the neighbours. More substantial landscaping is required,

2. Internal referral comments:

2.1. Development Engineer

Car & Motorbike Parking

1. *The development application should be refused as there is a 25% shortfall in the car parking provision required and will likely result in a increased demand for on-street parking within an area that is already experiencing high parking pressures.*

Particulars

Sec 5.3 Part B7 of Randwick DCP specifies the following parking rates applicable to the subject site.

For residential component

- 1.2 spaces per 2 bedroom unit
 - 1.5 spaces per 3 bedroom unit
 - 1 visitor space per 4 units
- (a) *The residential component includes 12 units comprise of 4 x 2 bedroom and 8 x 3-bedroom dwellings thereby generating a parking demand of 20 spaces (including 3 visitor spaces) when adopting the above rates.*
 - (b) *As only 15 spaces are proposed **there is a shortfall of 5 spaces (25%).** The shortfall is excessive and is not supported by Council's Engineers*
 - (c) *The site is located within a locality that is experiencing a very high demand for on-street parking. Observations by the Development Engineer indicate that generally there is no on-street parking available in Llanfoyst Avenue at most times during the day due to this high demand.*
 - (d) *Any impacts from parking shortfalls would therefore likely extend into the surrounding streets which is unacceptable.*
 - (e) *Part B7 of the RDCP states that motorbike parking is to be provided at the rate of 5% of the vehicle parking rate resulting in a requirement of 1 space. Although this has been provided, the position of the motorbike space is unacceptable as it is located at the end of a blind aisle. This area is required for manoeuvring of vehicles entering and exiting the last 2 carspaces either side of the parking aisle.*

Bicycle Parking

2. *The development application should be refused as there is a 100% shortfall in bicycle parking provision which has not been justified in the applicants Traffic and parking report.*

- (f) *Part B7 of RDCP states that bicycle parking is to be provided at a rate of 1 space per 2 dwellings + 1 visitor space per 10 dwellings resulting in a requirement of 7 spaces for the development.*
- (g) *The submitted plans indicate no provision for bicycle parking and therefore do not meet the minimum requirements of the RDCP.*
- (h) *The shortfall, especially in the context of the vehicle parking shortfall, is unacceptable.*

Further comments

The position of the waste bins right at the front may not be ideal from a planning perspective.

Waste Bin presentation (around 14-16 bins) will also be problematic due to the lack of a footpath. To address I will asking for a new footpath right along the site frontage immediately adjacent to the kerb so they can present the bins on a flat surface.

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

gsa planning

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

APPLICANT'S NAME: Parseh Llanfoyst Pty Ltd

SITE ADDRESS: Nos. 3 and 4 Llanfoyst Street, Randwick

PROPOSAL: Demolition of Existing Buildings, Lot Amalgamation and Construction of a Residential Flat Building

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

Randwick Local Environmental Plan (LEP) 2012

(ii) **The land is zoned:**

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

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

(iii) **The number of the relevant clause therein:**

Clause 4.4 – Floor Space Ratio which is stated as follows:

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

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

2. Overview

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

3. Background

Nos. 3 and 4 Llanfoyst Street were previously the subject of separate Development Applications, for construction of two residential flat buildings.

On 11 November 2020, a Development Application (DA 619/2020) was lodged with Randwick Council for demolition and construction of a four storey residential flat building with basement parking at No. 3 Llanfoyst Street.

On 31 December 2020, a separate Development Application (DA 718/2020) was lodged with Randwick Council for demolition and construction of a four storey residential flat building with basement parking at No. 4 Llanfoyst Street.

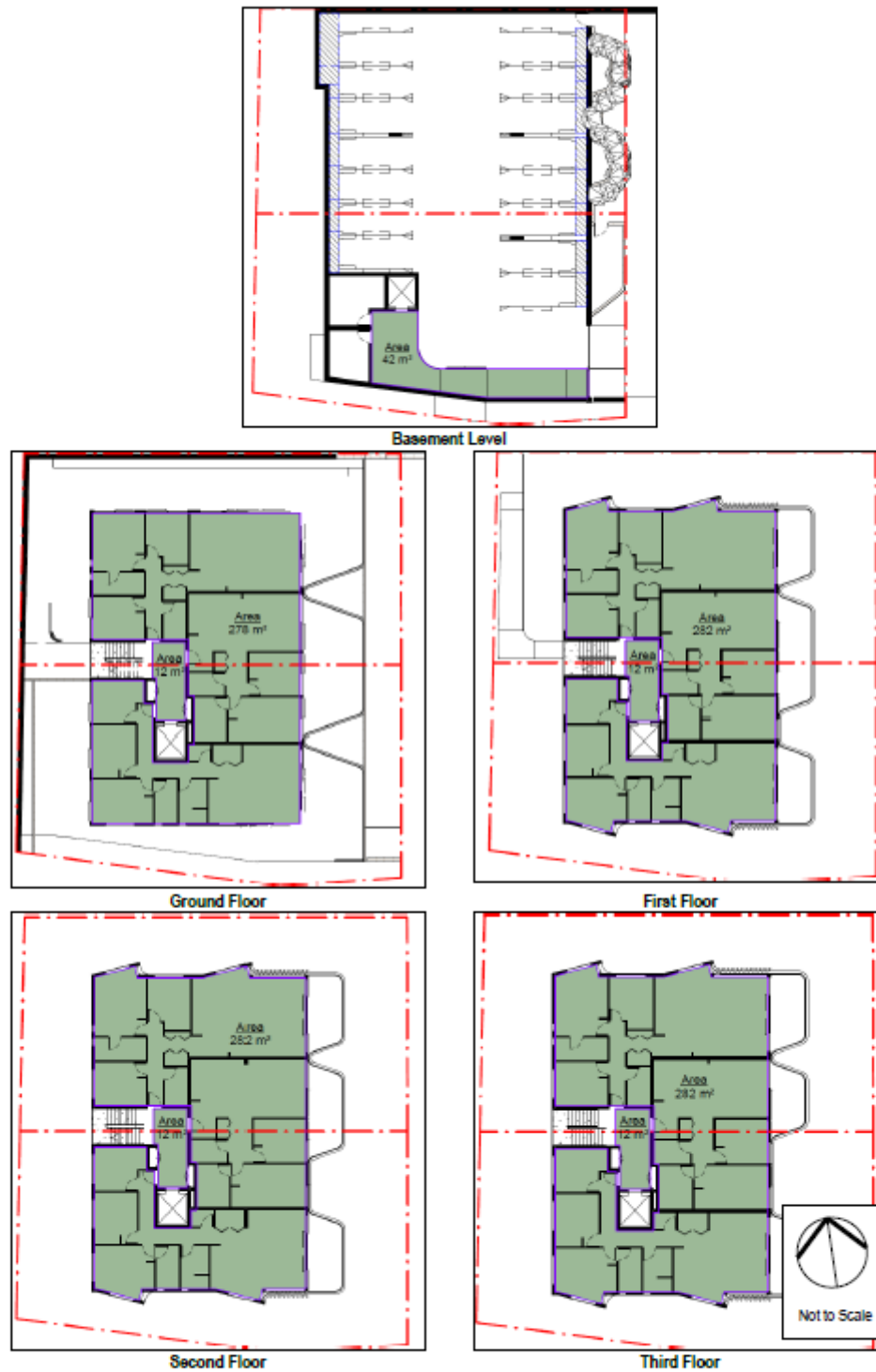
On 20 July 2022, following a deemed refusal of each of the abovementioned applications, a Class 1 appeal of the two DAs was heard by the Land & Environment Court (*Zhang v Randwick City Council* [2022] NSWLEC 1386). The amended scheme presented as part of this appeal was upheld by the Court on 20 July 2022, with a shared basement car park accessed by a single vehicle entry point.

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

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with the FSR Map which indicates a maximum FSR of 0.9:1 applies to the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal has a GFA of 1216m² and an FSR of 1.55:1 which departs from the development standard by 72% (509.95m²). This additional GFA is mainly located within the space in the middle of the consolidated site which would normally be required for side setbacks (see Figure 1 on the following page).

Notwithstanding the non-compliance, the proposal complies with the building height development standard and has been designed to maintain compatibility with the existing and desired future character of the area.



Source: OROSI Architecture
Figure 1: GFA Diagram

5. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

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

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

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

Flexibility is sought in the application of the FSR development standard to the proposed development in the circumstance of this particular case. The proposal has been designed to present a built form that is similar to development in the surrounding area, when viewed from the public domain.

Much of the additional GFA relates to the space in the middle of the consolidated site which would normally be required for side setbacks. These setbacks are in the centre of the site and no longer required by virtue of the consolidation of the site. These areas do not contribute to the building envelope and do not result in any environmental impacts. The proposal also complies with the LEP building height development standard. In addition, the proposal provides a rear setback similar to the individually approved development being DA 619/2020 (No. 3 Llanfoyst Street) and DA 718/2020 (No. 4 Llanfoyst Street) and, in our opinion, does not present an overdevelopment of the subject site. While the proposal does not comply with the side setback requirements, it provides greater side setbacks than the previous approvals.

The proposal has been designed to ensure neighbour amenity is not adversely impacted. The residential flat building will positively relate to the public domain when viewed from the street and rear, with a sympathetic built form. This is also achieved through the proposal's overcompliance with the landscaping controls of the DCP. The FSR variation allows for an architecturally designed residential flat building that presents as four storeys of residential development over a basement, with recessed upper levels to address Llanfoyst Street. This is contextually compatible with existing and recently approved developments in the neighbourhood. This will also preserve resident amenity and contribute to the high-quality redevelopment encouraged in Randwick, including many recently approved and constructed buildings of a similar or even larger scale.

We consider the FSR variation is a better planning outcome since the additional floor space is not easily discernible from surrounding areas. This is because it is generally contained within a compliant building height and similar building envelope to that previously approved by the Court on the site. It also remains visually compatible with adjacent buildings. Thus, the variation relates well to the public domain and visual amenity. In our opinion, as the proposal is consistent with the objectives of Clause 4.6, the variation is acceptable in this instance.

6. Justification of Variation to Development Standard

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

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

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

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

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

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

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

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

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

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

'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area. The relevant clauses in the LEP which relate to urban character and built form are:

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

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

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

The proposal will continue to contribute to the eclectic mix of permissible uses in the R3 zone. The proposal also remains compatible with the envelope of nearby developments recently approved and constructed. Importantly, this includes the previously approved residential flat buildings on the subject site (DA 619/2020 and DA 718/2020), which had a maximum roof height of RL 74.93 AHD and setbacks to match the proposal. In other words, the height and envelope are consistent with these buildings and compatible with the area's desired future character as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In this judgement, Clay AC notes:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

This approach was confirmed in the Appeal by Preston CJ, that the desired future character should be informed by the nearby and future development, and not limited by the development standards. Indeed, the Chief Judge linked this to Clause 4.6 and stated at [60], inter alia:

...the application of cl 4.6 of WLEP to the height and FSR development standards supports a broader not narrower construction of the term 'desired future character used in those development standards. Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to particular development (cl 4.6(1)(a)). However, cl 4.6 does not apply to a development standard that is expressly excluded from the operation of the clause (cl 4.6(2)). Neither the height of buildings development stand in cl 4.3 nor the FSR development standard in cl 4.4 is expressly excluded from the operation of cl 4.6. This contemplates that development that contravenes the height and development standards may be approved under cl 4.6.

The subject site is in an area which includes several other residential flat buildings, many of which are between three and four storeys in height (see Figure 2 on the following page).



Source: Nearmaps

Figure 2: Aerial Map of Site

● 3-4 Storey Built Form
 ■ Subject Site

Desired future character is also formed by recent approvals. A review of Council's online Clause 4.6 register indicates two development consents breaching the FSR development standard within vicinity of the site. These included DA 725/2017 for the 'demolition of all structures on site and construction of a part two and part three storey multi-dwelling housing development comprising 4 dwellings, car parking for 8 vehicles and associated site and landscaped works' at No. 2 Llanfoyst Street, Randwick, with a 4% FSR exceedance. The main justification was the proposal is compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.

On 12 November 2020, the Randwick Local Planning Panel (RLPP) approved DA 402/2020 for the 'demolition of existing structures and construction of a part 4 and part 5 storey residential flat building comprising 20 units with middle courtyard between two built forms, 2 levels of basement/semi-basement parking, strata subdivision, landscaping and associated works' at No. 21 Cook Street, Randwick, with a 15.56% FSR exceedance (and a 6% building height exceedance). The main justification was the minor exceedance had acceptable amenity impacts.

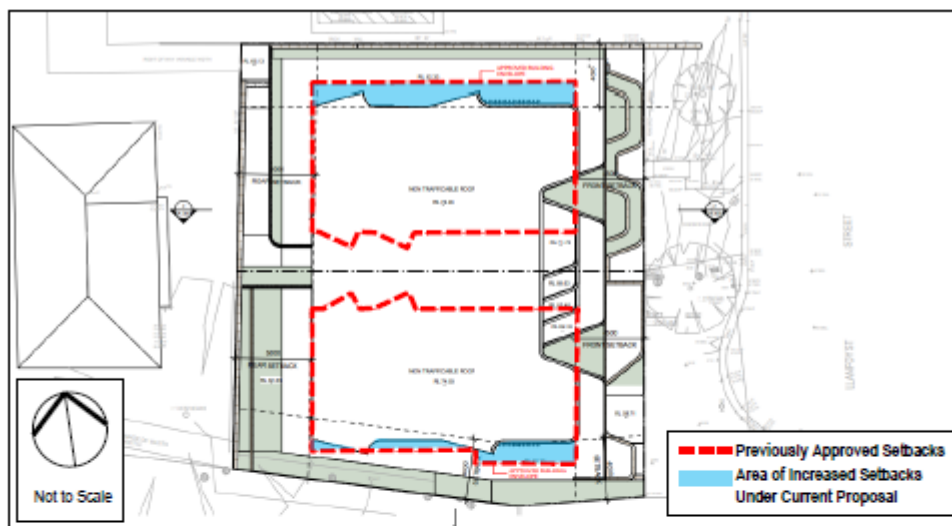
It is noted that, these DA's had a much smaller breach than the proposed development, nevertheless these are the only comparable breached within vicinity of the site. Given the above, the building envelope of two existing development consents relating to the subject site (DA 619/2020 and DA 718/2020) must be taken into consideration. As outlined throughout the SEE, the previous development consents do not breach the height of building development standard, however, have a wall height and setback (front and side) including building separation non-compliance. The proposal is consistent with the desired future character as all setbacks will be an improvement on the recent approvals of No. 3 and No. 4 Llanfoyst Street (DA 619/2020 and DA 718/2020 respectively) and the proposal will also comply with the 12m height

of buildings development standard at the street frontage which is clearly consistent with what Council is anticipating from the street (see Figures 3 and 4).



Source: OROSI Architecture

Figure 3: Proposed Height at Cross Section 1



Source: OROSI

Figure 4: Proposed Site Plan

The consolidated site provides some advantages in terms of bulk and scale. For instance, the space along the shared boundary of the middle of the previous lots can be utilised for built form where it would previously have been required for a side setback. This increases the GFA that can be provided on the site without resulting in any amenity impacts or additional height. In *Moskovich v Waverley Council* [2016] NSWLEC 1015 at [60], the argument of discounting the space required for setbacks had a site not been consolidated was accepted:

...The site's steeply sloping topography, size, two street frontages, and its context which includes existing buildings of greater height and bulk than the proposal as well as the amalgamation of two allotments result in a large amount of the floor area being below the Bondi Road level and within a setback area between buildings that would be required if the site remained as two allotments, which were developed separately. So although there is a significant exceedance in the numerical FSR control a large amount of this floor area would not add to bulk or result in impacts greater than that from a complying development. The floor area is contained within a bulk and form of development which complies with the height control (other than the lift over run) and is appropriate to its context with acceptable impacts. (emphasis added)

Therefore, if the GFA in the space between the buildings usually required for setbacks was excluded from the total calculation 68.5, the total GFA would be 1147m².

Accordingly, the FSR, as viewed from surrounding areas, is considered consistent with the desired future character.

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

The proposed residential flat building will be architecturally designed to have a contemporary style. This ensures that the proposal provides a well-articulated built form which contributes to visual interest when viewed from Llanfoyst Street and neighbouring properties. The proposed building facades incorporates articulation breaks and openings, particularly at the front and rear facades.

The proposal will continue to provide an environmentally sensitive design, with natural cross-ventilation and solar access achieved for 66% and 58% of units respectively. The proposed residential flat building will also meet the requirements under State Environmental Planning Policy (SEPP) BASIX – 2004 and the majority of provisions under SEPP 65 – Design Quality of Residential Apartment Development.

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

The subject site is neither a heritage or contributory item, nor does it directly adjoin any items of heritage significant. The surrounding neighbourhood, including the subject site, is all zoned R3 Medium Density Residential. The R3 zone is characterised by a variety of detached dwellings, multi-unit housing and residential flat buildings. The proposal is unlikely to affect the amenity of nearby heritage items and will result in a contemporary style, residential flat building use.

The proposal results in a compliant height of building and will continue to be perceived as four residential storeys above a podium basement as the previously approved residential flat buildings under DA 619/2020 and DA 718/2020. This remains a compatible scale and character with the nearby provides an appropriate transition in scale to the adjoining medium density development.

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

In our opinion, given the proposal will maintain the approved building height as well as the increase setbacks from those previously approved under DA 619/2020 and DA 718/2020, the proposal will not result in unreasonable impacts on adjoining or nearby properties in respect of views, privacy or overshadowing. The majority of the location of the additional floor space is located along the shared boundary of the middle of the previous lots that was previously required for a side setback which does not add to the visual bulk of the residential flat building.

The area of non-compliance will not affect solar access for neighbouring properties and their private open space. As demonstrated by the shadow diagrams prepared by OROSI (submitted separately), the proposal will not result in a discernible increase in shadowing to the adjoining properties, given it will generally maintain the previously approved envelope.

In terms of view loss, it should be noted that we have not had the opportunity to inspect the surrounding properties. However, given the proposal will retain the approved maximum building height at RL 74.93 AHD, it is unlikely that the proposed additional floor space located between the two previously approved buildings will impact on views from surrounding properties.

Notwithstanding the proposed FSR non-compliance, compliance with visual and acoustic privacy has been achieved. All primary habitable rooms along each of the side boundaries have included privacy screens or angled windows to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space.

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

Accordingly, although the proposal will exceed the FSR control, this is unlikely to have any significant adverse impacts.

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

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. There are a number of environmental planning grounds that justify the FSR in this instance including consistency with the context; infill between previously approved buildings; good design and amenity; and Environmental Amenity.

Consistency within the Context

In *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161, Commissioner O'Neill acknowledges that the desired future character cannot simply be derived from controls, rather should take into account surrounding developments at [44,46]:

The presumption that the development standards that control building envelopes determine the desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character. Although development standards for building envelopes are mostly based on comprehensive studies and strategic plans, they are frequently generic, as demonstrated by the large areas of a single colour representing a single standard on Local Environmental Plan maps, and they reflect the zoning map. As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPLs that incentivise particular development with GFA bonuses or other mechanisms that intensify development. All these factors push the ultimate contest for evaluating and determining a building envelope for a specific use on a site to the development application stage. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (see Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD DB2) at [62]-[63]). For these reasons, the desired future character of an area is not defined and fixed by the development standards that determine the building envelope for a site. Development standards that determine building envelopes for a locality can only contribute to shaping the character of that locality (SJD DB2 at [53]-[54] and [59]-[60]).

I accept the applicant's experts' evidence that there is a unique character in the vicinity of the site created by the existing four storey residential flat buildings, including the four storey residential flat building adjoining the

site to the north. The existing four storey residential flat buildings contribute to a higher density character for the sub-precinct identified by the applicant's experts in the vicinity of the site.

As in this case, the surrounding area has an eclectic character with a number of large residential flat buildings and dwellings in the immediate vicinity which also appear to breach the FSR development standard. This is further demonstrated in the desired future character section and Figures 2 - 4 above. Consistency in the context was recognised as an environmental planning ground in *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097 where Commissioner O'Neill states at [42] that:

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

The R3 Medium Density Residential zoning anticipates residential flat development such as is being proposed. It is noted that the existing detached dwellings are somewhat inconsistent with this emerging character. Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality.

Infill Between Previously Approved Buildings

The consolidated site provides some advantages in terms of bulk and scale. As discussed, the space along the shared boundary of the middle of the previous lots can be utilised for built form where it would previously have been required for a side setback. This increases the GFA that can be provided on the site without resulting in any amenity impacts or additional height. In *Moskovich v Waverley Council* [2016] NSWLEC 1015 at [60], the argument of discounting the space required for setbacks had a site not been consolidated was accepted. It is noted that the current scheme would increase the respective side setbacks, reducing bulk at that point.

Good Design and Amenity

The proposal promotes good design and amenity in accordance with the object of the EPA Act in Clause 1.3(g). The amenity of surrounding sites compared to a compliant FSR will be preserved as discussed in the development standard's Objective (d) above.

The proposal provides a well-articulated, quality built form which will not present as an overdevelopment on the site. The recessed residential levels as well as balconies along the front elevation will provide visual interest and reduce the perceived bulk. The increased side setbacks further reduce perceived bulk of the proposed development when compared with the recent development consent of DA 619/2020 and DA 718/2020.

Environmental Amenity

Our assessment has demonstrated the proposal will preserve neighbours' privacy, solar access and views, as per the previously approved residential flat buildings on the site. Despite the proposed additional floor space, this is located in the shared boundary of the middle of the previous lots which was previously required for side setbacks thus maintaining a similar relationship with neighbouring properties.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and objects of the EPA Act.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient

environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

7. Clause 4.6(4)(a) Requirements

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

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

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the R3 Medium Density Residential zone, as discussed below:

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

Response: The proposed residential flat building will provide for the housing needs of the community by providing 12 units, which will form part of a residential flat building consistent within the R3 zone.

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

Response: The proposal will provide a mixture of two- and three-bedroom units within a residential flat building, which will contribute to the variety of housing types in this zone.

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

Response: N/A

Objective: 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.

Response: The proposal will present as four storeys above basement parking, with the proposed residential storeys recessed. This design approach will recognise the desirable elements of the streetscape by providing a well-designed contemporary building which remains consistent with the previous approvals on the site (DA 619/2020 and DA 718/2020) and those for nearby properties on Llanfoyst Street. The proposal remains compliant with the building height control, which ensures the height and scale of the proposal is consistent in the context.

Objective: To protect the amenity of residents.

Response: The proposal will maintain the approved building height as well as the increase setbacks from those previously approved under DA 619/2020 and DA 718/2020, and thus will not result in unreasonable impacts on adjoining or nearby properties in respect of views, privacy or overshadowing. The majority of the location of the additional floor space is located along the shared boundary of the middle of the

previous lots that was previously required for a side setback which does not add to the visual bulk of the residential flat building. The area of non-compliance will not affect solar access for neighbouring properties and their private open space. As demonstrated by the shadow diagrams prepared by OROSI (submitted separately), the proposal will not result in a discernible increase in shadowing to the adjoining properties, given it will generally maintain the previously approved envelope. All primary habitable rooms along each of the side boundaries have included privacy screens or angled windows to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space. Accordingly, the proposal will protect the amenity of surrounding residents and future occupants.

Objective: To encourage housing affordability.

Response: The proposal will encourage housing affordability by providing 12 additional units, which will increase housing supply in the locality.

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

Response: N/A

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

8. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

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

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties. The proposal is generally within a compliant building envelope with much of the additional GFA being located below the street level or in the space normally required for side setbacks on an unconsolidated site.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

9. Conclusion

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

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.4: FSR	
12	What is the control	1 & 2	0.9:1	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1 st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	6	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in Wehbe.	6.1	The proposal satisfies Test 1 of Wehbe: <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	6.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed FSR facilitates a sympathetic medium density development consistent with the planning objectives of the area; The FSR exceedance is accommodated within the maximum building height; The FSR exceedance is also accommodated within an envelope with increased setbacks compared to the recent development consents of No.3 Llanforyst Street and No. 4 Llanforyst Street being DA 619/2020 and DA 718/2020 respectively; The proposed bulk is similar to other buildings in the neighbourhood, including many residential flat buildings that are existing, recently approved and constructed; The additional floor space is within a four-storey built form recessed above a podium basement, preserving visual amenity and privacy; The proposal will preserve neighbours' privacy, solar access and views, as per the previously approved residential flat buildings on the site 	YES

Clause 4.6 Exceptions to Development Standards – FSR
Nos. 3 & 4 Llanforyst Street, Randwick - Job No. 22351

Page 16

			<ul style="list-style-type: none"> The proposal provides good design and amenity, both for future residents and to surrounding properties; and The breach is consistent in the context and with the desired future character. 	
26-27	2 nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	7	The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of Wehbe. The proposal is also consistent with the objectives of the R3 Medium Density Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	8	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

© GSA PLANNING 2022

This document is and shall remain the property George Karavanas Planning Pty Ltd (trading as GSA Planning). The document may only be used for the purposes for which it was commissioned and in accordance with the Letter of Instruction. Unauthorised use of this document in any form whatsoever is prohibited.

Clause 4.6 Exceptions to Development Standards – FSR
Nos. 3 & 4 Llanforyst Street, Randwick - Job No. 22351

Page 17

Appendix 3: SEPP 65 Compliance Table

Clause	Design Criteria	Proposal	Compliance												
Part 3: Siting the Development															
3D-1	Communal and Public Open Space														
	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)		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).		No												
3E-1															
	<div>Deep soil zones are to meet the following requirements: Site Area:</div> <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%		No
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														
	<div>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:</div> <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> <div>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</div> <div>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</div>	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														

Clause	Design Criteria	Proposal	Compliance
	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, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street	The car parking requirement is 20 spaces for cars and 7 bicycle spaces.	No
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.		Unclear
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter		Unclear
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		
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor These minimums do not preclude higher ceilings if desired		Yes.
4D	Apartment Size and Layout		
	Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each		Yes

D19/23

Clause	Design Criteria	Proposal	Compliance															
	A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m ² each																	
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms		Yes															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height		Yes															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window		Yes															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)		Yes															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)		Yes															
	Living rooms or combined living/dining rooms have a minimum width of: <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> <div>The minimum balcony depth to be counted as contributing to the balcony area is 1m</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		No.															
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		N/A.															
4G	Storage																	

Clause	Design Criteria	Proposal	Compliance
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none">• Studio apartments - 4m³• 1 bedroom apartments - 6m³• 2 bedroom apartments - 8m³• 3+ bedroom apartments - 10m³ <p>At least 50% of the required storage is to be located within the apartment</p>		No.

D19/23

Appendix 4: 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.		No
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.		No
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.		No
	(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).		No
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.		No
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.		No

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 		No

	<ul style="list-style-type: none"> 1 visitor space per 4 dwellings 		
	Motor cycle requirements: 5% of car parking requirement		Yes. Location not appropriate.
4. Bicycles			
	Residents: <ul style="list-style-type: none"> 1 bike space per 2 units Visitors: <ul style="list-style-type: none"> 1 per 10 units 		No.

3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area is to be landscaped open space.		No.
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.		No.
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.		No.
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.		No.
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.		No.
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.		No.
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be: <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. 		No.

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.		
	For residential flat buildings: (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 8m ² and a minimum dimension of 2m.		No.
2.3.2	Communal open space		
	Communal open space for residential flat buildings is to be: (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		
	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.		No.
3.4	Setbacks		
3.4.1	Front setback		
	(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.		No.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.		
3.4.2	Side setback		
	Residential flat building (i) Comply with the minimum side setback requirements stated below: - 14m ≤ site frontage width < 16m: 2.5m (ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to: - 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. (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.		No.
3.4.3	Rear setback		

D19/23

D19/23

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

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. 		N/A.

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - 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. 		
4.4	External wall height and ceiling height		
	(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. 		No.
	Postal services and mailboxes <ul style="list-style-type: none"> (i) Mailboxes are provided in accordance with the delivery requirements of Australia Post. (ii) A mailbox must clearly mark the street number of the dwelling that it serves. 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.		
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 		Yes.
	(ii) Use multiple access cores to: <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.
	(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.		N/A.
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms		Yes.

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	and limiting the use of borrowed light and ventilation.		
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.		Yes.
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.		Yes.
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.		Yes.
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.		No.
	(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.		No.
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 		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - Light colours or finishes where they may cause adverse glare or reflectivity impacts (vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration. (vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used. 		
4.12	Earthworks Excavation and backfilling		
	<ul style="list-style-type: none"> (i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification. (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. (iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling. 		No.
	Retaining walls <ul style="list-style-type: none"> (iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries. (v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain. (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). 		No.
5.	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	<ul style="list-style-type: none"> (i) Dwellings must receive a minimum of 3 hours sunlight in living areas 		No

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	and to at least 50% of the private open space between 8am and 4pm on 21 June.		
	(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.		No
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.		No
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		No
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.		No
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
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

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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.		No.
5.3	Visual privacy		
	(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 		No.

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection		
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 		Yes.
5.5	View sharing		
	<ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain. (vi) Clearly demonstrate any steps or measures adopted to mitigate 		No.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	potential view loss impacts in the development application.		
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.		Yes.
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.		No
	(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.		Unclear
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.		Unclear
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.		Unclear
	(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.		Unclear
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.		Unclear
	(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.		No
	(ii) The location of car parking and access facilities must minimise the		No

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	length of driveways and extent of impermeable surfaces within the site.		
	(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.		No
	(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.		No
6.2	Configuration		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.		Yes
	(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.		Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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: <ul style="list-style-type: none"> - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain. 		
7. Fencing and Ancillary Development			
7.1	Fencing		
	(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials (iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.		Unclear
7.2	Front Fencing		
	(i) The fence must align with the front property boundary or the predominant fence setback line along the street.		Unclear
	(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.		Unclear

D19/23

D19/23

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(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.		Unclear
	(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios: <ul style="list-style-type: none"> - Front fence for sites facing arterial roads. - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. 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.		Unclear
	(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.		Unclear
	(vi) The preferred materials for front fences are natural stone, face bricks and timber.		Unclear
	(vii) Gates must not open over public land.		Unclear
	(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.		Unclear
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 follow the topography of the land, with each step not exceeding 2200mm above ground level (existing). (ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits. (iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.		Unclear

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iv) Side or common boundary fences must be finished or treated on both sides.		
7.6	Storage		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m ³ (b) 1-bedroom apartments – 6m ³ (c) 2-bedroom apartments – 8m ³ (d) 3 plus bedroom apartments – 10m ³		No
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.		Unclear
	(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.		Unclear
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. 		Unclear

D19/23

Responsible officer: Isobella Lucic, Senior Environmental Planning Officer

File Reference: DA/526/2022

Development Application Report No. D20/23

Subject: 11 Mundarra Street Clovelly (DA/123/2022)

Executive Summary

Proposal:	Demolition of the existing dwelling on the site and erection of a detached part 2-storey part 3-storey dwelling with a swimming pool, landscaping and associated structures
Ward:	North Ward
Applicant:	Andrew Best
Owner:	Ms Sarah Gittoes & Mr Russell Munro
Cost of works:	\$1,833,738
Reason for referral:	10 unique submissions in objection

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 123/2022 for demolition of the existing dwelling on the site and the erection of a detached part 2-storey part 3-storey dwelling with a swimming pool, landscaping and associated structures at No. 11 Mundarra Street, Clovelly, for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal exceeds the maximum floor space ratio development standard in Clause 4.4 – Floor Space Ratio of Randwick Local Environmental Plan 2012. The applicant has failed to identify the non-compliance and as such, a Clause 4.6 request to vary this standard has not been submitted. The proposed variation cannot be supported and therefore, by necessity, the development application must be refused.
2. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives of the R2 Low Density Residential zone established within Randwick Local Environmental Plan 2012 as it will have an adverse impact on the existing streetscape character, and it does not protect the amenity of residents.
3. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to satisfy the Aims of the Plan in Clause 1.2(2)(d) of Randwick Local Environmental Plan 2012.
4. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives in Clause 6.7 – Foreshore Scenic Protection Area of Randwick Local Environmental Plan 2012 as it has not been designed to minimise its visual impact on public areas in the Foreshore Scenic Protection Area.
5. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives and controls of Randwick Development Control Plan 2013:
 - 2.3 – Site Coverage
 - 2.6 – Private Open Space

D20/23

- 3.1 – Floor Space Ratio
 - 3.2 – Building Height
 - 3.3 – Setbacks
 - 4.1 – Building Design
 - 4.4 – Roof Design
 - 5.3 – Visual Privacy
 - 5.4 – Acoustic Privacy
 - 7.5 – Swimming Pools
6. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street.
7. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precent, and the building proposes significant deviations from both the numerical and merit-based controls and is therefore not in the public interest.

Attachment/s:

Nil



D20/23

1. Executive summary

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

The proposal seeks development consent for demolition of the existing dwelling on the site and erection of a detached part 2-storey part 3-storey dwelling with a swimming pool, landscaping and associated structures.

A total of 10 submissions and a petition containing 30 signatures in objection were received following the public notification period. The key concerns raised in the submissions relate to excessive height, bulk and scale, tree impacts and residential amenity impacts.

The key issues identified in Council's assessment relate to the non-compliance with the Floor Space Ratio (FSR) development standard, built form and design and residential amenity impacts.

The proposed development exceeds the maximum FSR development standard under RLEP by 4%. The applicant has failed to identify the non-compliance and as such, a Clause 4.6 request to vary this standard has not been submitted. The proposed variation cannot be supported and therefore, by necessity, the development application must be refused.

The built form incorporates a second floor which is not integrated into the roof form and reads as a separate level. The visual bulk and scale of the proposed dwelling house does not complement the desirable streetscape character and it fails to achieve an appropriate urban design outcome.

The size and scale of the external enclosing walls will also result in significant adverse visual bulk and additional overshadowing to the adjoining residential properties.

The applicant was provided an opportunity to amend the proposal to address the design issues raised but upon review, the amended plans did not adequately address the issues raised. The applicant was therefore requested to withdraw the application. The applicant failed to withdraw the application.

The proposal is therefore recommended for refusal.

2. Site Description and Locality

The subject site is known as 11 Mundarra Street, Clovelly and is legally described as Lot 2 in DP 214199. The site is a rectangular corner allotment with a 21.03m frontage to Mundarra Street, a 12.8m frontage to Battery Street, a 3.44m wide splayed corner and a total site area of is 354.1m².

The site contains a single storey detached dwelling house and garage. Refer to **Figure 1**.

The immediate vicinity of the site is predominately characterised by low scale 1-2 storey detached and semi-detached dwellings.

The adjoining property to the north at 9 Mundarra Street contains a two storey detached dwelling house. Further to the north in Mundarra Street there are 3-4 storey residential flat buildings. Refer to **Figures 2 and 3**.

The adjoining property to the east at 23 Battery Street contains a semi-detached dwelling with a first floor rear addition. Further to the east in Battery Street are 1-2 storey semis and detached dwellings. Refer to **Figures 4 and 5**.



Figure 1 – Existing dwelling house on the site



Figure 2 – Existing interface with 9 Mundarra Street to the north



Figure 3 – Existing context to the north showing 9 Mundarra Street

D20/23



Figure 4 – Existing interface with 23 Battery Street to the east



Figure 5 – Existing context to the east along Battery Street

3. Relevant history

There are no previous determinations of relevance to this proposal

4. Background

In an email to the applicant, dated 11 July 2022, Council raised concerns with the proposal in relation to non-compliance with the FSR development standard under RLEP 2012 and the site coverage, deep soil landscape area, private open space, external wall height, setback and design requirements objectives and controls under RDCP 2013. Council requested the applicant to withdraw the application on the basis that any amendments to address the issues raised would result in fundamental changes to the design outside the scope of the DA.

On 20 July 2022, Council officers met with the applicant and amendments to the design were outlined by the applicant in response to the issues raised by Council. Council provided the applicant with an opportunity to amend the proposal in response to the issues raised.

On 29 July 2022, the applicant submitted amended plans with the following design changes:

Ground Floor

- reconfigured front-entry with front-wall relocated 750mm inwards.
- relocation of the southern wall by 350mm to the north.
- reconfigured the rear-entry with eastern wall relocated 1600mm inwards.
- reconfiguration of the plantroom.
- reconfiguration of the laundry-entry with eastern wall relocated 1000mm inwards.
- relocation of the eastern wall inwards to reflect reconfigured garage and plantroom.

First Floor

- reconfiguration of the kitchen.
- living 2 area has been moved inwards away from both the western and southern boundaries.
- overhanging concrete slab was reduced by 250mm.
- addition of a 1200mm pool fence.

Second Floor

- reconfiguration of the rooftop terrace
- introduction of a green-roof and maintenance access path.
- relocation of the eastern bedroom wall by 750mm.

On 12 October 2022, following a review of the amended plans, Council officers reiterated its concerns in relation to FSR, external wall height, building setback, design aspects, the elevated swimming pool and acoustic and visual privacy impacts and advised the applicant that the amendments did not go far enough to address the issues raised. The amended plans were not formally accepted by Council. The applicant was requested to withdraw the application.

The applicant advised that it did not wish to withdraw the application as requested.

This assessment report is based on the originally lodged proposal.

5. Proposal

The proposal seeks development consent for demolition of the existing dwelling on the site and erection of a detached part 2-storey part 3-storey dwelling with a swimming pool, landscaping and associated structures.

A description of the uses at each level is provided below:

Level	Proposed Use
Ground Floor	<ul style="list-style-type: none"> • new driveway and vehicle crossover via Mundarrah Street • double garage providing off-street parking for two (2) x vehicles (5.9m x 11m), • storage and plant room • gym

	<ul style="list-style-type: none"> • bathroom • laundry • 3 x bedrooms, each with internal robes and windows oriented to the landscaped garden to the south • pedestrian access via Mundarra Street provides access to the slightly elevated • entry foyer. The foyer leads to a staircase which provides upper-level access to the first-floor living room • garden
First Floor	<ul style="list-style-type: none"> • open-plan living, dining and kitchen area, which are open to the terrace and pool • area • secondary living area with terrace • WC • storage • stairs leading to upper and lower levels • garden
Second Floor	<ul style="list-style-type: none"> • one (1) bedroom with walk-in-robe and ensuite • rooftop terrace • stairs leading to lower levels • garden

6. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. A total of ten (10) unique submissions in objection and a petition containing 30 signatures were received as a result of the notification process:

- 25 Battery Street

Issue	Comment
Excessive bulk and scale	It is accepted that the proposal would result in excessive bulk and scale when viewed from the adjoining properties and within the streetscape and it is not supported in the current form. Refer to Section 9 of this report.
Excessive site coverage	The proposal exceeds the maximum site coverage control and it is not supported in the current form. Refer to Section 9 of this report.
Non-compliance with deep soil	The proposal complies with the deep soil landscape area control under Randwick Development Control Plan 2013.
Private open space is not at ground level	The proposed elevated private open space is not supported. Refer to Section 9 of this report.
It does not complement the streetscape	The proposed third storey is not suitably integrated into the roof form and is not supported. Refer to Section 9 of this report.
Object to the rooftop terrace and BBQ area	The proposed rooftop terrace is not supported.

- 28 Battery Street

Issue	Comment
Excessive scale	It is accepted that the proposal would result in excessive bulk and scale when viewed from the adjoining properties and within the streetscape and is not supported in the current form. Refer to Section 9 of this report.
Object to 3 storey development, adverse impact within the streetscape	The proposed third storey is not suitably integrated into the roof form and is not supported. Refer to Section 9 of this report.
Acoustic and visual privacy impact from the roof top garden	The proposed rooftop terrace is not supported.

- 27 Battery Street

Issue	Comment
Excessive height and scale	It is accepted that the proposal would result in excessive bulk and scale when viewed from the adjoining properties and within the streetscape and is not supported in the current form. Refer to Section 9 of this report.
Inadequate setback of the rooftop terrace to Battery Street	The proposed third storey is not suitably integrated into the roof form and is not supported. Refer to Section 9 of this report.
Acoustic and visual privacy impacts from the rooftop terrace	The proposed rooftop terrace is not supported.

- 18 Mundarrah Street

Issue	Comment
Object to the removal of the Melaleuca Street Tree and proximity to vehicular crossover	The subject tree is proposed to be retained.
Excessive site coverage	The proposal exceeds the maximum site coverage control and is not supported in the current form. Refer to Section 9 of this report.
No private open space at the ground floor	The proposed elevated private open space is not supported. Refer to Section 9 of this report.
Excessive height bulk and scale	It is accepted that the proposal would result in excessive height, bulk and scale when viewed from the adjoining properties and within the streetscape and is not supported in the current form. Refer to Section 9 of this report.
Excessive wall heights	The proposal exceeds the maximum external wall heights under RDCP 2013 and is not supported.
Rooftop terrace does not comply with the controls	The proposed rooftop terrace is not supported.
Visual and acoustic privacy impact of the elevated pool	The elevated pool adjacent to the boundary is not supported.
Overdevelopment of a small site	The proposal in its current form is not supported.

- 17 Battery Street

Issue	Comment
Impact on Melaleuca Tree	The subject tree is proposed to be retained.

- 29 Battery Street

Issue	Comment
Excessive size and scale for a small site	It is accepted that the proposal would result in excessive height, bulk and scale when viewed from the adjoining properties and within the streetscape and is not supported in the current form. Refer to Section 9 of this report.
Inadequate garage setback to the street	The proposal does not comply with the front setback control and the garage will be visually dominant within the streetscape.
Noise and overlooking impacts from the rooftop garden	The proposed rooftop terrace is not supported.
Overdevelopment	The proposal in its current form is not supported.

- 12 Mundarrah Street

Issue	Comment
Adverse impact on the Paperbark street tree.	The proposal in its current form is not supported.

- 23 Battery Street (two submissions)

Issue	Comment
Excessive site coverage	The proposal exceeds the maximum site coverage control and is not supported in the current form. Refer to Section 9 of this report.
Inadequate private open space	The proposed elevated private open space is not supported. Refer to Section 9 of this report.
Excessive building height	The proposal exceeds the maximum external wall heights under RDCP 2013.
Overdevelopment of the site	The proposal in its current form is not supported.
Rooftop design non-compliance with the DCP	The proposed rooftop terrace is not supported.
Overshadowing	The variations to the external wall height will contribute to additional overshadowing to the adjoining residential property.
Visual and acoustic privacy from the elevated pool	The elevated pool adjacent to the boundary is not supported.

- No address

Issue	Comment
Loss of an on-street car space due to the driveway	The loss of on-street parking will be offset by provision of on-site parking resulting in no net reduction in parking on the street

Issue	Comment
Non-compliant FSR	No clause 4.6 written request was submitted with the application. Refer to Section 9 of this report.
Noise from the elevated pool	The elevated pool adjacent to the boundary is not supported.
3 storeys is excessive	It is accepted that the proposal would result in excessive height, bulk and scale when viewed from the adjoining properties and within the streetscape and is not supported in the current form. Refer to Section 9 of this report.
Impacts from use of the rooftop terrace	The proposed rooftop terrace is not supported.

- Petition containing 30 signatures

Issue	Comment
Tree impacts	The proposal in its current form is not supported.
Site coverage	The proposal exceeds the maximum site coverage control and is not supported in the current form. Refer to Section 9 of this report.
Private open space	The proposed elevated private open space is not supported. Refer to Section 9 of this report.
Building Height/bulk	The proposal exceeds the maximum external wall heights under RDCP 2013.
Visual privacy impacts from rooftop terrace and elevated pool	The proposal in its current form is not supported.

7. Relevant Environment Planning Instruments

7.1. SEPP (Building Sustainability Index: BASIX) 2004

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

7.2. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

Chapter 2 of the Resilience and Hazards SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the *Coastal Management Act 2016*. It applies to land within the coastal zone across NSW.

All foreshore land within the Randwick LGA is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the Resilience and Hazards SEPP map as 'coastal use area'.

Development on land within the coastal use area (clause 2.11)

The site is identified as being land within the “*coastal use area*” on the Resilience and Hazards SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted.

Specifically the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage. These factors have been considered in the assessment of this application.

The built form incorporates a second floor which is not integrated into the roof form and reads as a separate level. The visual bulk and scale of the proposed dwelling house does not complement the desirable streetscape character and it fails to achieve an appropriate urban design outcome.

On that basis, the proposal will have an adverse impact on the visual amenity of the Coastal Use Area.

Chapter 4 Remediation of Land

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A site inspection identified that the site is currently occupied by a residential building. A review of Council’s GIS and historical aerial photos has shown that the site has been used for this purpose since prior to 1975. A search of Council’s contaminated land register specifies that the site is not potentially contaminated.

In conclusion, the site is suitable for the proposed development in accordance with contamination requirements of the Resilience and Hazards SEPP.

7.3. State Environmental Planning Policy (Biodiversity and Conservation) 2021*Chapter 2 Vegetation in non-rural areas*

The aims of Chapter 2 are:

- “(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”*

Clause 7(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). The proposal involves the removal of two street trees to make way for the vehicular crossover in Mundarra Street. At the time of writing, no comments had been received from Council’s Landscape Officer in relation to the application. In any event, the proposal is not supported for planning and design reasons outlined in this report.

7.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density under RLEP 2012, and the proposal is permissible with consent.

The proposal is contrary to the relevant objective of the R2 zone in that it does not protect the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.75:1	0.78:1*	No
CI 4.3: Building height (max)	9.5m	9.4m	Yes

* The GFA plans submitted with the application fail to include the storage area at the southern wall of the parking area (4m²) and the space between the pool and the gym against the eastern wall (17m²), which equates to 21m². The proposal has a GFA of 276.95m², which equates to an FSR of 0.78:1.

7.4.1. Clause 4.6 - Exceptions to development standards

The application fails to provide a written request seeking an exception to the FSR development standard in accordance with Clause 4.6 of RLEP 2012. Council must refuse the application. Refer to the Key Issues section of this report.

7.4.2. Clause 6.7- Foreshore scenic protection area

The site is located within the Foreshore Scenic Protection Area (FSPA) under RLEP 2012. The proposed development has not been designed to minimise its visual impact on public areas of the FSPA due to its excessive height, bulk and scale. In addition, it does not positively contribute to the scenic quality of the FSPA. The proposal therefore fails to comply with the objectives of the FSPA and cannot be supported.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is inconsistent with the predominant low scale residential character in the immediate vicinity of the site.
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered unsuitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal will result in significant adverse visual amenity impacts within the streetscape. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Floor Space Ratio

A maximum Floor Space ratio (FSR) development standard of 0.75:1 is applicable under Clause 4.4 of RLEP 2012. The proposed development will have an FSR of 0.78:1, which exceeds the maximum FSR development standard by 4%. A review by Council officers of the gross floor area (GFA) plans submitted with the original application indicate the variation has been underestimated as the storage at the end of the parking area and the space between the gym and pool at ground level has not been included in the calculation of GFA. The applicant has failed to identify the non-compliance and as such, a Clause 4.6 request to vary this standard has not been submitted. The proposed variation cannot be supported and therefore, by necessity, the development application must be refused.

Built Form and Design

The surrounding built form is predominately low density residential development characterised by one and two storey semis and detached single dwellings. The proposed dwelling house contains bedrooms and a parking garage at ground level, a living area and elevated pool at the first floor and a master bedroom and ensuite (internal area of 57m²) together with a partially enclosed rooftop terrace at the second floor.

Number of Storeys

In conjunction with the maximum building height control of 9.5m applicable to the site under RLEP 2012, a maximum external wall height of 7m also applies to the site under Part C1 Section 3.2 of RDCP (refer to discussion below under *External Wall Height*).

The explanation notes in Section 3.2 of RDCP stipulate that structures above the external wall height limit are for roof elements only. Therefore, any habitable space located above the first-floor must be integrated into the building roof form to maintain a two-storey height and limit the bulk, scale and visual impact of buildings as viewed from the street and from neighbouring dwellings.

The proposed second floor is not integrated into the building roof form as it contains vertical solid walls along the elevations that will read as a separate level and add to the visual bulk and scale of the building. The proposed second floor will be highly visible when viewed from the adjoining residential properties and within the streetscape (refer to **Figures 4 and 5**). The visual bulk and scale of the proposed dwelling house does not complement the desirable streetscape character and it fails to achieve an appropriate urban design outcome.



Figure 4 – View of the existing dwelling on the site from the intersection of Mundarrah Street and Battery Street



Figure 5 – View of the existing dwelling on the site from Battery Street

External Wall Height

The parapet at the northern elevation is at RL 40.47 and the existing ground level below is at RL 31.30, equating to an external wall height of 9.17m. Whilst it is acknowledged the second floor steps in 3m from the edge of the building below, it will read as a separate storey when viewed from the adjoining residential properties and within the streetscape and add to the visual bulk and scale of the building.

The parapet at the eastern elevation is at RL 40.47 and the existing ground directly below is at RL 31.12, equating to an external wall height of 9.35m, which exceeds the maximum 7m wall height control by 33%. The size and scale of the external enclosing wall will result in significant adverse visual bulk and additional overshadowing to the adjoining residential property at 23 Battery Street. The non-compliance with the external wall height control is not supported.

Front Setback

Part C1 Section 3.3.1 of RDCP 2013 requires the front setback to be consistent with the average setbacks of the adjoining dwellings, or where there are no adjoining dwellings a minimum of 6m. The site is a corner allotment and therefore a 1.5m setback applies to the secondary frontage along Battery Street. The adjoining property to the north in Mundarra Street is setback 4m to the street boundary. The proposed development will be setback 2.2m to Mundarra Street at ground level. The reduced front setback will exacerbate the visual bulk and scale of the development to an unacceptable level. The proposal therefore fails to enhance the streetscape character along the primary street frontage. The non-compliance with the front setback control is not supported.

Side Setback

Part C1 Section 3.3.1 of RDCP 2013 requires a minimum 1.2m setback at the ground and first floor of the dwelling. The proposal will have a setback of 0.9m-1m at the ground floor and 0.9m at the first floor to the northern boundary and therefore it does not comply with the minimum setback requirements. In addition, the garage is required to be setback 1.2m to the northern side boundary in accordance with the garage design controls in Section 6.3 of RDCP 2013. The non-compliant

side setback will have an adverse visual impact within the streetscape and increase the visual and acoustic privacy impacts from the elevated swimming pool to the adjoining residential properties.

Site Coverage

A maximum site coverage of 55% applies to the site under Part C1 Section 2.3 of RDCP 2013. The architectural plans submitted with the application indicate a site coverage of 194.6m², which equates to 54.9%. There is no site coverage plan submitted with the original application to show how the site coverage was calculated. It appears the applicant excluded the swimming pool from the calculation of site coverage. However, the swimming pool is within the building structure and therefore it should be included in the site coverage calculation. Based on Council's mapping tool, the building covers 230m² of the site, which equates to 64% and exceeds the maximum 55% site coverage control (Refer to **Figure 6**).

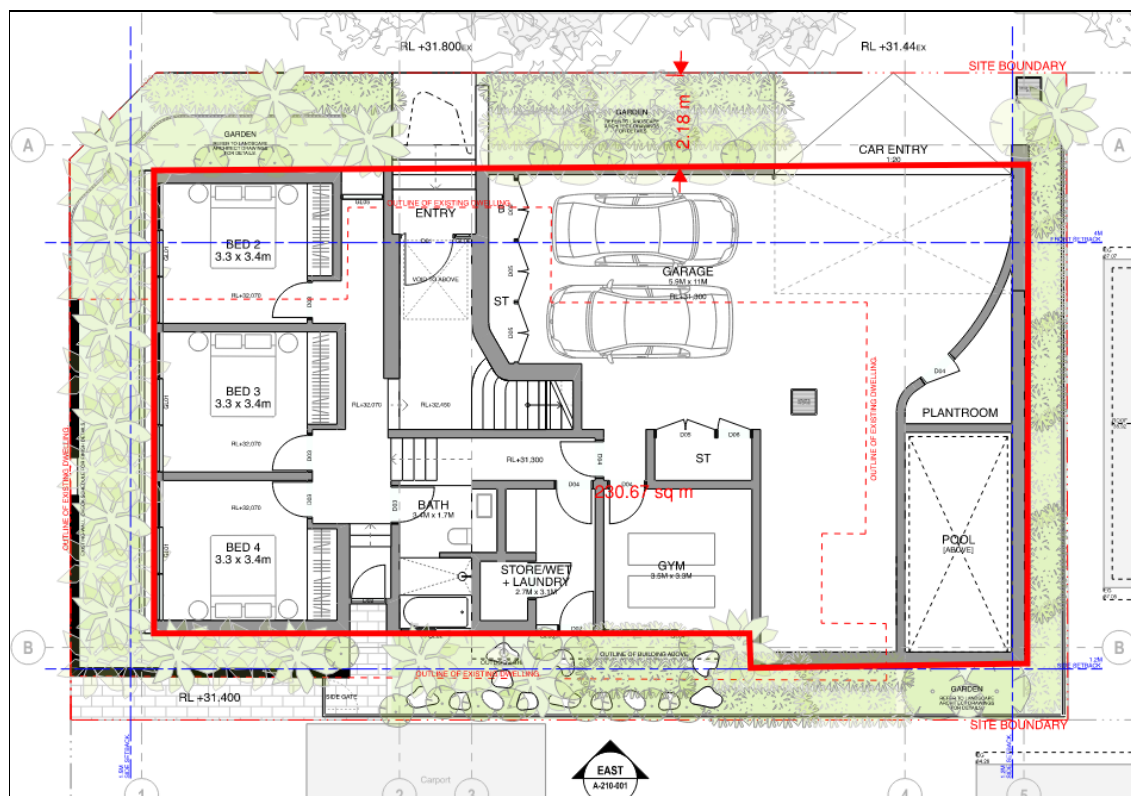


Figure 6 – Council's calculation of site coverage includes the building footprint at ground level

Private Open Space

Part C1 Section 2.6 of RDCP 2103 requires a minimum contiguous private open space (POS) of 6m x 6m at ground level, directly accessible from the internal living area behind the dwelling. The proposed development provides POS in the form of a terrace adjoining the internal living area at the first floor with the dimensions of 5.3m x 5.1m. The proposal does not comply with the POS requirements under RDCP 2013 in terms of the configuration and location requirements.

Rooftop Terrace

Part C1 section 4.4 of RDCP 2013 does not permit roof terraces on the uppermost or main roof of the building. The second floor contains a rooftop terrace with a partially enclosed seating area and associated, walkway, planters and decks. The proposed roof terrace is not integrated with the built form and would result in adverse visual bulk and scale within the streetscape.

Building Design

Part C1 Section 4.1 requires terraces and decks to be of a size and configuration appropriate to the proportions of the building without excessively increasing its visual bulk. The proposed rooftop

terrace includes a canopy and solid walls that result in excessive bulk and scale when viewed from the neighbouring properties and within the streetscape.

Fencing

Part C1, Section 7.2 of RDCP 2013 requires the fence on the secondary street frontage of corner allotments, to be tapered down to match the height of the primary street fence once past the front façade alignment. The proposed development includes a 3.3m high concrete wall for a length of 10m along Battery Street, which will result in significant adverse visual bulk within the streetscape. The proposal also includes a 1.8m high fence that wraps around the corner in Battery Street and Mundurrah Street. The proposed boundary treatment is not consistent with the existing or desired future streetscape character of the area.

Swimming Pool

Part C1, Section 7.5 Swimming and Spa Pools requires pools to be located to minimise noise impacts on the adjoining dwellings, and decking must be positioned away from the side and rear boundaries to minimise adverse privacy impacts on the neighbours. The proposed swimming pool will be located at the first floor in the northeast corner of the site adjacent to the side boundaries. The elevated pool and its surrounds will result in potential acoustic and visual privacy impacts to the adjoining properties. It is considered that this is a result of an inappropriate design and not a site constraint. Any screening to offset the privacy impacts would only serve to increase the visual bulk to the adjoining properties. The proposed elevated pool is therefore not supported.

10. Conclusion

That the application to demolish the existing dwelling on the site and erection of a detached part 2-storey part 3-storey dwelling with a swimming pool, landscaping and associated structures be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal exceeds the maximum floor space ratio development standard in Clause 4.4 – Floor Space Ratio of Randwick Local Environmental Plan 2012. The applicant has failed to identify the non-compliance and as such, a Clause 4.6 request to vary this standard has not been submitted. The proposed variation cannot be supported and therefore, by necessity, the development application must be refused.
2. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives of the R2 Low Density Residential zone established within Randwick Local Environmental Plan 2012 as it will have an adverse impact on the existing streetscape character, and it does not protect the amenity of residents.
3. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to satisfy the Aims of the Plan in Clause 1.2(2)(d) of Randwick Local Environmental Plan 2012.
4. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives in Clause 6.7 – Foreshore Scenic Protection Area of Randwick Local Environmental Plan 2012 as it has not been designed to minimise its visual impact on public areas in the Foreshore Scenic Protection Area.
5. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposed development fails to comply with the objectives and controls of Randwick Development Control Plan 2013:

- 2.3 – Site Coverage
 - 2.6 – Private Open Space
 - 3.1 – Floor Space Ratio
 - 3.2 – Building Height
 - 3.3 – Setbacks
 - 4.1 – Building Design
 - 4.4 – Roof Design
 - 5.3 – Visual privacy
 - 5.4 – Acoustic Privacy
 - 7.5 – Swimming Pools
6. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposed development will result in adverse environmental impacts on the existing neighbourhood character and the visual amenity of the street.
7. The application is considered unacceptable pursuant to the provisions of s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the development will create an undesirable precent, and the building proposes significant deviations from both the numerical and merit-based controls and is therefore not in the public interest.

Appendix 1: Referrals**1. Internal referral comments:****1.1. Development Engineer**

Council's Development Engineer raised no concerns with the proposal from an engineering perspective. At the time of writing, no comments had been received from Council's Landscape Officer.

D20/23

Appendix 2: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	64%	No Refer to Section 9.1 of this report – Discussion of Key Issues
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	25%	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Rooftop terrace 3.8m x 3.3m Terrace at first floor with void above 5.1m x 5.3m	No Refer to Section 9.1 of this report – Discussion of Key Issues
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	0.78:1	No Refer to Section 9.1 of this report – Discussion of Key Issues
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	9.5m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	<i>Eastern Elevation</i> 9.35m <i>Northern Elevation</i> 9.17m	No Refer to Section 9.1 of this report – Discussion of Key Issues
3.3	Setbacks		
3.3.1	Front setbacks		
	i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit	2.1m (Mundarra Street – primary	No Refer to Section

D20/23

D20/23

DCP Clause	Controls	Proposal	Compliance
	<p>assessment.</p> <p>ii) Corner allotments: Secondary street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites <p>iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front</p>	<p>street frontage).</p> <p>The adjoining dwelling to the north is setback 4.3m.</p> <p>1.5m (Battery Street – secondary street frontage)</p>	<p>9.1 of this report – Discussion of Key Issues</p> <p>Yes</p>
3.3.2	<p>Side setbacks:</p> <p>Semi-Detached Dwellings:</p> <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels <p>Dwellings:</p> <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p><i>Northern boundary</i></p> <ul style="list-style-type: none"> - 0.94m-1m (ground floor) - 0.9m (first floor) <p><i>Eastern Boundary</i></p> <ul style="list-style-type: none"> - 1.2m-1.8m Ground Floor and First Floor 	<p>No</p> <p>Refer to Section 9.1 of this report – Discussion of Key Issues</p> <p>Yes</p>
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	N/A	
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m 	<p><i>Northern Elevation</i></p> <ul style="list-style-type: none"> - 12.2m (First Floor) 	Yes

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> encourage innovative design 		
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <ul style="list-style-type: none"> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <p><i>Dormers</i></p> <ul style="list-style-type: none"> iii) Dormer windows don't dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <p><i>Celestial windows and skylights</i></p> <ul style="list-style-type: none"> vii) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> viii) Contained within roof form and not visible from street and surrounding properties. 	A rooftop terrace is proposed on the second floor/main roof.	No Refer to Section 9.1 of this report – Discussion of Key Issues
4.5	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 		Acceptable
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <p><i>where site has significant slope:</i></p> <ul style="list-style-type: none"> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	No significant earthworks are proposed.	Yes
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct 	The internal living area will	Yes

D20/23

DCP Clause	Controls	Proposal	Compliance
	ii) sunlight between 8am and 4pm on 21 June POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	receive a minimum 3 hours direct sunlight at the winter solstice	
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	The additional shadow cast by the proposal will mainly fall on the adjoining road frontages. Notwithstanding, the excessive wall heights will contribute to additional overshadowing of the adjoining property to the east.	Yes
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>	The proposed design and layout will maximise solar access and natural ventilation for the future occupants.	Yes
5.3	Visual Privacy		
	Windows		

DCP Clause	Controls	Proposal	Compliance
	i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	The full height living and dining room windows at the First Floor and the walk-in-robe window at the second floor at the eastern elevation will result in potential privacy impacts to the adjoining property to the east at 23 Battery Street	No
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The rooftop terrace will result in potential overlooking of the rear yards of the neighbouring properties to the east.	No
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	The elevated swimming pool at the first floor will result in potential noise impacts to the rear of the adjoining residential properties.	No Refer to Section 9.1 of this report – Discussion of Key Issues
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	The dwelling will have obvious and direct access from Mundarrah Street.	Yes
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living	The proposal will not result in any undue view impacts from the surrounding	Yes

D20/23

DCP Clause	Controls	Proposal	Compliance
	areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	properties.	
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	One vehicular access crossover will be provided from Mundarra Street.	Yes
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls)	A double garage will be integrated into the design of the building.	Yes
6.3	Setbacks of Parking Facilities		

DCP Clause	Controls	Proposal	Compliance
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	The proposed garage is required to be setback 1.2m to the northern side boundary in accordance with Section 3.3 of the RDCP. The proposed garage will be setback 0.94m-1m to the northern boundary.	No Refer to Section 9.1 of this report – Discussion of Key Issues
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	5.5m	No
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	Garage door width is 5.5m Parapet wall is 1m	Partial
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	Concrete and metal	Yes
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade 	3m along Battery Street and 1.8m at the corner	No

D20/23

DCP Clause	Controls	Proposal	Compliance
	<p>(tapered down to fence height at front alignment).</p> <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>		
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	1.8m	Yes
7.5	Swimming pools and Spas		
	<p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> <p>iii) Locate to minimise noise impacts on the adjoining dwellings.</p> <p>iv) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>v) Setback coping a minimum of 900mm from the rear and side boundaries.</p> <p>vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks.</p> <p>vii) Position decking to minimise privacy impacts.</p> <p>viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.</p>	The proposed pool will be elevated at the first floor adjacent to residential properties.	<p>No</p> <p>Refer to Section 9.1 of this report – Discussion of Key Issues</p>
7.6	Air conditioning equipment		
	<p>i) Minimise visibility from street.</p> <p>ii) Avoid locating on the street or laneway elevation of buildings.</p> <p>iii) Screen roof mounted A/C from view by parapet walls, or within the roof form.</p> <p>iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.</p>	No details provided	No

DCP Clause	Controls	Proposal	Compliance
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	No details provided	No

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed.	2 car spaces	Yes

3.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Outbuildings and ancillary structures integrated with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.	The proposed development has not been designed to minimise its visual impact on public areas of the FSPA due to its excessive height, bulk and scale.	No

Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/123/2022

Development Application Report No. D21/23

Subject: 59 Beach Street, Coogee (DA/637/2019/D)

Executive Summary

Proposal:	Section 4.55(2) - Modification of the approved development for the removal of trees and changes to the privacy screen type
Ward:	North Ward
Applicant:	Mr P C S Ong
Owner:	Mrs V Z Yu & Mr P C S Ong
Cost of works:	\$1,002,011
Reason for referral:	Section 4.55(2) modification proposing amendments to conditions of consent added/amended by the Panel and more than 10 submissions received against the development.

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/637/2019 for the removal of trees and change to privacy screen type, at No. 59 Beach Street, Coogee, in the following manner:

- **Amend Condition 2.b. to read:**

- b. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
 - W26 & W27 northern facing windows at upper level floor
 - W22 south facing retreat window at ground level

Alternatively, external privacy screens having a minimum height of 1.6m (measured above the finished floor level) must be provided to W26 and W27 northern facing windows at upper level floor. The privacy screens must be constructed with fixed lattice/slats/louvres with individual openings not more than 30mm wide.

- **Delete Condition 2.d.**

- **Add Conditions 31A, 31B, 31C, 31D, 41:**

Tree Management

- 31A Approval is granted for removal of the row of five (5) established Camelia's in the northern side setback of this development site, adjacent the rear/northern veranda, due to the significant root loss/damage that has already occurred during construction of the approved rear terrace, with there now being no way they can be safely retained into the future, especially when considering that additional excavations still need to be performed in this area for upgraded/renewed sewer and drainage lines/pipes;
- 31B Those smaller, variable shrubs in the southeast site corner (not the Lilly Pillies), only where needed to accommodate works associated with connecting the new stormwater pipe into the existing easement, as per the 'Tree Protection' conditions in the S4.55 'D' consent.

Replacement Planting

- 31C The approvals provided in the 'Tree Management' condition are subject to the following replacement planting being undertaken to ensure that reasonable levels screening, privacy and environmental amenity are maintained for both future occupants and neighbours as a result of these works:

- a. An evenly spaced row of evergreen screening species, in undisturbed deep soil, being installed along the northern site boundary, between the northwest corner of the northern side terrace and northeast site corner, to ensure that a **co-joined, continuous screening effect will be created upon establishment**;
- b. They must all be a minimum of 2.5 metres in height at the time of planting, selecting a species which will achieve a minimum height of 6 metres at maturity;
- c. This new screen planting must then be maintained in a vigorous and healthy condition, until maturity, for the life of the development.

The applicant must contact Council's Landscape Development Officer on 9093-6613 to perform a site inspection to determine compliance with all requirements of this condition, with specific written approval to be obtained from Council's Officer, prior to any Occupation Certificate.

Tree Protection Measures

- 31D To ensure retention of the mature *Syzygium luehmannii* (Small Leafed Lilly Pilly) that is located right in the northeast site corner, as well as the other screening shrubs to its south, across the width of the rear boundary in good health, the following measures are to be undertaken:

- a. The Principal Certifier must ensure that the Lower Ground Floor Stormwater Drainage Plan by Danmor Consulting Engineers, dwg ST01, rev D, dated 02/02/23 is amended to show that the 100mm UPVC pipe which is currently intersecting the centre of the rear yard will be **re-positioned** so that it is now installed hard up against the rear/eastern edge of the footprint/rear veranda, and is to be directed to the southern site boundary, where it shall then connect into the easement in the southeast site corner.
- b. Prior to installing the PVC pipe described in point 'a' above, the applicant must firstly contact Council's Landscape Development Officer (9093-6613) for an inspection to confirm compliance with these requirements. Installation cannot proceed, and an Occupation Certificate cannot be issued unless this inspection takes place.
- c. These trees must be physically protected (as one group) by installing evenly spaced star pickets at a setback of **1.5 metres** to the west of their trunks, matching up with the northern and southern site boundaries, to which, safety tape/para-webbing/shade cloth or similar shall be permanently attached to completely enclose them for the duration of works.
- d. This fencing shall be provided and maintained for the duration of works, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".
- e. Within the TPZ there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
- f. Where roots are encountered which are in direct conflict with the approved UPVC drainage line as specified in point 'a' above, they may be cut cleanly using only hand-held tools, not machinery, with the affected area to then be backfilled

with clean site soil so that roots are not left exposed to the atmosphere.

- g. Ground levels in the rear setback between the footprint/rear veranda and trees must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which must remain as undisturbed, deep soil.
- h. Any new common boundary fencing, within a radius of **3 metres** of their trunks can only be a system which is supported on localised pads, not continuous strip footings, with details confirming compliance to be shown.
- i. The Principal Certifier must ensure compliance with all these requirements, both on the plans as well as on-site during the course of works, and prior to any Occupation Certificate.

Maintenance of Replacement Planting

41. To ensure the screen planting specified in the 'Replacement Planting' condition of this Modification 'D' consent is maintained through to establishment, a written performance report, together with a time stamped photograph, must be provided annually, by a qualified Landscape Contractor, and submitted to Council's Landscape Development Officer, commencing after the issuing of an Occupation Certificate for the development. The first report must be submitted to Council's Officer within thirty (30) days from the issue of the Occupation Certificate, and then annually on the date of this anniversary, for a period of three (3) years. The reports must clearly state:

- The general health, condition and growth rate of the trees;
- Presence of pests, diseases, or any other issues that require treatment;
- Any other recommendations to maintain ongoing health.

Council's written acceptance of the annual reports must be obtained each and every year. This condition will be satisfied upon acceptance of the 3rd yearly report. Responsibility for compliance with this condition is held with the property and any subsequent/future owners.

Attachment/s:

Nil

D21/23



1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because it is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a development previously approved by the Panel. The modification application proposes amendments to conditions of consent added and amended by the Panel, Furthermore, more than 10 submissions received against the development.

The original development application was referred to the RLPP because 16 unique submissions by way of objection were received.

2. Site Description and Locality

The subject site is known as 59 Beach Street and is legally described as Lot 12 in DP 847232. The site is 352m², is regular in shape, with a slightly skewed front boundary with a 15.24m frontage to Beach Street to the west and a side boundary depth of 23.35m and 22.865m to the north and south respectively.

The site drops from street level along Beach Street by around 3.4m from 35.52 down to RL32.12 a characteristic of sites along this side of Beach Street. The site is currently under construction for alterations and additions to the existing dwelling, including a new upper floor, as per the past approval under DA/637/2019/C.

The adjoining site to the north at No. 6 Gordon Avenue, has its rear yard containing terraced rear yard, a swimming pool and attached pergola adjoining the subject site. The site to the south at No. 61 Beach Street contains a three storey dwelling on a similar topography with a lower ground level

sitting below street level; presenting as a two storey dwelling at street level. This is characteristic of other properties along this side of Beach Street.

3. Details of Current Approval

DA/637/2019

The original development application was approved by the Randwick Local Planning Panel on 26 November 2020. Development consent was granted for alterations and additions to the existing dwelling at lower ground, ground and new upper level. A variation to the height control of 2.1% (200mm) was granted.

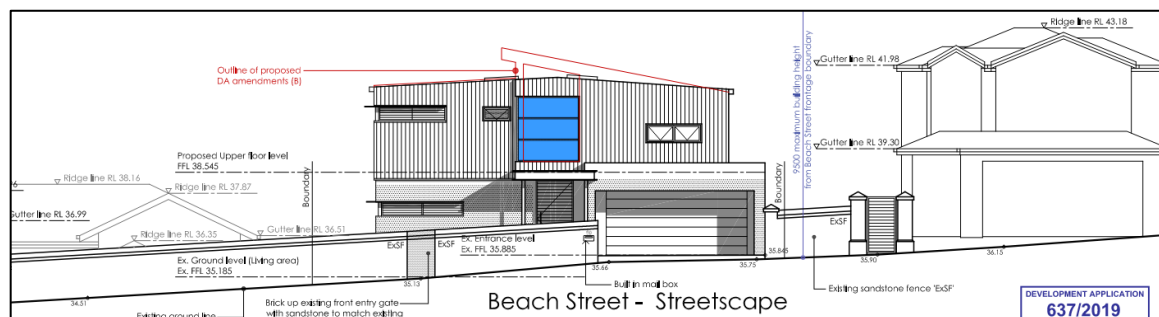


Figure 1. Approved Beach Street elevation – DA/637/2019

The assessing officer's recommended Condition 2 as follows:

Amendment of Plans & Documentation

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

- a. A privacy screen having a height of 1.6m (measured above rear terrace of the following areas:
 - Full length of the southern side of the lower ground level deck connected to the laundry.
 - Full length of the northern side ground level balcony connected to the Master Bedroom.
 - Full length of the southern and northern sides of the ground level rear balcony.
 - Full length of the southern and northern sides of the upper level rear balcony.

All privacy screen/s must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- b. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
 - W26 & W27 northern facing windows at upper level floor
 - W22 south facing retreat window at ground level
 - c. No consent is granted for the relocation of the rear boundary fence unless written consent is obtained from the owners of No. 8 Gordon Avenue.

The Panel amended Condition 2(a) to require privacy screening to window W28 and added Condition 2(d) to require the retention of all trees. Condition 2 of development consent DA/637/2019 thus reads:

Amendment of Plans & Documentation

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

- a. *A privacy screen having a minimum height of 1.6m (measured above the deck or balcony floor level) of the following areas:*
- *Full length of the southern side of the lower ground level deck connected to the laundry;*
 - *Full length of the northern side ground level balcony connected to the Master Bedroom;*
 - *Full length of the southern and northern sides of the ground level rear balcony connected to the ensuite and retreat; and*
 - *Full length of the southern and northern sides of the upper level rear balcony.*

All privacy screen/s must be constructed with either:

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

Privacy treatment shall be provided to W28 to ensure direct overlooking of neighbouring properties does not occur. The privacy screen must be constructed with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

- b. *The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:*
- *W26 & W27 northern facing windows at upper level floor*
 - *W22 south facing retreat window at ground level*
- c. *No consent is granted for the relocation of the rear boundary fence unless written consent is obtained from the owners of No. 8 Gordon Avenue.*
- d. ***All trees on the development site shall be retained as indicated on the approved drawings. Any removal would require development consent.***

DA/637/2019/A

A Modification Application pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 was approved for modifications to the approved development on 26 November 2021 to extend the lower ground floor and ground floor to the east by 800mm and resizing window W32 at southeast corner on upper floor from 970mm(w) x 1500mm(h) to 970mm(w) x 2100mm(h).

DA/637/2019/B

A Modification Application pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 was lodged for modifications to the approved development to delete Condition 2a & 2b relating to privacy treatment, reduction of skylights, minor revision/relocation of windows, external stair revision, widen garage door, add louver roof to balcony and repair/rebuild

retention wall. The application was approved by the Randwick Local Planning Panel on 10 March 2022. Condition 2(a) was amended to remove the requirement for a privacy screen on the southern side of lower ground level deck connected to the laundry. The proposal to amend Condition 2(b) to delete the privacy treatment requirement for windows W26 & W27 was not supported. Condition 2(b) is hence retained.

DA/637/2019/C

A Modification Application pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 was approved on 2 May 2022 under delegation for modifications to the approved development in relation to the demolition plans per design specification by Structural Engineer and change of proposed cladding colour and scheme.

At this point, modified development consent condition No. 2 reads:

Amendment of Plans & Documentation

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

a. *A privacy screen having a minimum height of 1.6m (measured above the deck or balcony floor level) of the following areas:*

- *Full length of the northern side ground level balcony connected to the Master Bedroom;*
- *Full length of the southern and northern sides of the ground level rear balcony connected to the ensuite and retreat; and*
- *Full length of the southern and northern sides of the upper level rear balcony.*

All privacy screen/s must be constructed with either:

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

Privacy treatment shall be provided to W28 to ensure direct overlooking of neighbouring properties does not occur. The privacy screen must be constructed with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

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

- *W26 & W27 northern facing windows at upper level floor*
- *W22 south facing retreat window at ground level*

c. *No consent is granted for the relocation of the rear boundary fence unless written consent is obtained from the owners of No. 8 Gordon Avenue.*

d. *All trees on the development site shall be retained as indicated on the approved drawings. Any removal would require development consent.*

e. *The amended roof above the ground floor balcony is to remain non-trafficable at all times.*

- f. *The proposed earthworks, retaining wall and addition of stairs at lower ground floor adjacent to the southern and western sides of the dwelling shall be deleted from the Section 4.55 'B' plans.*

4. Proposal

The proposal seeks to amend Condition 2(a), Condition 2(b) and 2(d) which relate to privacy screens and trees.

Amendment to Condition 2(a)

The proposal seeks to amend Condition 2(a) to remove the privacy screen requirement for W28.

Condition 2(a) has been reproduced below.

A privacy screen having a minimum height of 1.6m (measured above the deck or balcony floor level) of the following areas:

- *Full length of the northern side ground level balcony connected to the Master Bedroom;*
- *Full length of the southern and northern sides of the ground level rear balcony connected to the ensuite and retreat; and*
- *Full length of the southern and northern sides of the upper level rear balcony.*

All privacy screen/s must be constructed with either:

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

Privacy treatment shall be provided to W28 to ensure direct overlooking of neighbouring properties does not occur. The privacy screen must be constructed with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

Amendment to Condition 2(b)

The proposal seeks to amend Condition 2(b) to remove the privacy treatment requirement for windows W26 & W27.

Condition 2(b) has been reproduced below.

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

- *W26 & W27 northern facing windows at upper level floor*
- *W22 south facing retreat window at ground level*

The applicant proposes to provide a fixed privacy screen in lieu of the glazing treatment requirement for W26 and W27.

Deletion of Condition 2(d)

The proposal seeks to delete Condition 2(d), which has been reproduced below.

All trees on the development site shall be retained as indicated on the approved drawings. Any removal would require development consent.

This condition was imposed by the Randwick Local Planning Panel, rather than Council's landscape development officer. The applicant seeks to remove this condition because the approved

stormwater and northern external wall conflicts with the trees. Specifically, removal is sought for 6 non-protected trees marked along the northern boundary of the site.

5. Section 4.55(2) Assessment

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

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

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

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

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

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

3. *Notification and Consideration of Submissions:*

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. The following submissions were received as a result of the notification process:

- 4/56 Beach Street, Coogee

D21/23

Issue	Comment
<p>I am the owner of Unit 4, 56 Beach street Coogee. I have copied in other owners in our apartment block.</p> <p>Indirectly I have been notified that amendments for the development plans of 59 Beach street Coogee have been lodged and are being considered. We have not been notified of these amendments independently by the Council. This development was the subject of multiple objections because, amongst other things, a severe impact on shared views. Our unit in particular has been significantly impact by Council's original decision to approve the plans.</p> <p>Can you please as a matter of urgency indicate whether the amendments will impact on views (again). The plans seem to involve the addition of a new louvre, privacy screen, and changes to the roofing. It is clear also that they are seeking to remove six trees.....</p> <p>I assume that if this matter is, we will be notified and have the opportunity to put forward our position.</p>	<p>No changes are proposed to the approved building envelope. The modification relates to window privacy treatment and tree management. Thus, view corridors are maintained as per the approval.</p>

- 4/56 Beach Street, Coogee

Issue	Comment
<p>I refer you to the Notice of Amendment to Development Consent DA/637/2019/D along with the previous Development Applications for 59 Beach Street Coogee NSW 2034 that begin with DA/637/2019.</p> <p>I refer to Randwick City Council in their Notice of Determination of 26 November 2020 under 2 d:</p> <p><i>All trees on the development site shall be retained as indicated on the approved drawings. Any removal would require development consent.</i></p> <p>This determination was issued and our complaint upheld that as neighbours, we would have our privacy compromised because of the new approved height of the residence at 59 Beach Street.</p> <p>To ensure privacy was maintained Council determined trees currently on the property and currently scoped on the plans would need to remain in place unless consent was sought. See letter attached.</p> <p>In the original DA for this property, you can clearly see a tree at the front of the property.</p>	<p>The tree matters have been reviewed by Council's Landscape Development Officer who has advised that:</p> <ul style="list-style-type: none"> • Condition 2(d) is not practical or achievable as the majority of vegetation did not meet the minimum threshold for protection under the DCP at the time of lodgement; • Numerous major roots of the Camelias have been severed/damaged by construction of the new rear slab. These trees cannot be expected to remain stable, safe and survive into the future. Further works are required in this area. • Despite the damage to the trees, this is not a breach of the consent, as the building is consistent with the approved footprint. <p>Conditions of consent are recommended to remove and replace the trees along the northern boundary.</p> <p>Refer to Key Issues and referral for further details.</p> <p>In relation to privacy, the window that is the subject of concern is W37, on the front elevation of the dwelling, facing the street. This window has a sill height of 1.65m, which mitigates views into 56 Beach Street, which is located across the road.</p>

<p>This tree has appeared on every site map issued on every related DA since.</p> <p>However, it would appear that the tree has been removed without consent. See images provided.</p> <p>Firstly, this would appear to be an unlawful action that should be investigated.</p> <p>Secondly, the issue for me resident at 4/54 Beach Street Coogee is that with the extra height permitted, 59 Beach will now see directly into my apartment, without that tree in place. The applicant should cease construction until this matter is investigated and alterations made to the building plans to remove the window facing my apartment, to ensure privacy is maintained in lieu of the tree.</p>	
--	--

- 6 Gordon Avenue, Coogee

Issue	Comment
<p>We do not agree to the removal of the trees along the northern boundary. These trees are 6-7m high and provide huge amounts of screening and give us privacy from the massive 2 storey dwelling of 59 Beach St. If Council agrees on their removal they are agreeing to take away our privacy.</p> <p>I note the applicant has already cut many branches on the trees that face my property, taking away our privacy afforded by these trees. As well, these trees can prevent dust/particles flowing onto my white house. I am having to clean it a lot more due to the building works currently. Furthermore, a large tree was removed by a tree removalist company several months ago on the Beach St Northern side. I approached the arborist at the time about this. He said the applicant has council approval to remove this tree, despite it being a condition of the original DA approval that all trees on the northern side are to remain and not be removed. Can Council please send me correspondence relating to the allowance by Council for the removal of this large tree. If something does not exist then perhaps Council needs to investigate further.</p> <p>As to the remaining trees that the applicant wishes to have removed. I am completely against this for the below reasons:</p> <ul style="list-style-type: none"> • It was a condition when the original DA was approved that these trees NOT be removed. How can Council now go back on 	<p>The tree matters have been reviewed by Council's Landscape Development Officer who has advised that:</p> <ul style="list-style-type: none"> • Condition 2(d) is not practical or achievable as the majority of vegetation did not meet the minimum threshold for protection under the DCP at the time of lodgement; • Numerous major roots of the Camelias have been severed/damaged by construction of the new rear slab. These trees cannot be expected to remain stable, safe and survive into the future. Further works are required in this area. • Despite the damage to the trees, this is not a breach of the consent, as the building is consistent with the approved footprint. • The applicant has amended the stormwater plans, which allows for the retention of a canopy tree in the north-east corner of the site. • The deletion of Condition 2(d) is thus acceptable. <p>Nonetheless, it must be emphasised that landscape planting cannot be relied upon for privacy protection, as per Clause 5.3(v), Part C1 of the DCP: <i>Screen planting and planter boxes may be used as a supplementary device for reinforcing privacy protection. However, they must not be used as the sole privacy protection measure.</i></p>

D21/23

<p>that original decision when it will clearly impact on our privacy in a significant way.</p> <ul style="list-style-type: none"> • These trees provide privacy and screening for many rooms in my house including our dining room, kitchen, living room, 3 bedrooms and bathroom. Without these trees the applicant would be able to see into our living space directly from any north facing rooms of the new structure, as well as all balconies that are being constructed. Our privacy will be severely impacted if these trees were allowed to be removed. <p>Of real concern, is that these photos do show that the applicant can see into our habitable rooms and property with the bamboo/tree screening in its current state. Imagine how much more the applicant could see if this screening were to die, be cut, poisoned, or blown over in a storm. Shown by the photos in the RLPP report.</p> <p>This applicant has already had a non-compliant DA approved during covid. If it was outside covid, it would not have been approved. Please don't let him invade our privacy even more. This is the 3rd time the applicant has come back on some of these proposals, having been rejected twice previously. I find it amazing that the applicant can keep coming back on the same thing yet we have no right of appeal once decisions have been made. Could someone please explain to me how this is possible?</p>	<p>Based on this, the privacy impact of the approved development was assessed in the absence of any screen planting.</p> <p>Nonetheless, in response to the objector's concerns, Conditions of consent are thus recommended to replace the trees along the northern boundary. The replacement tree planting must achieve a minimum height of 6m at maturity. This will satisfactorily provide a similar privacy screening effect as the existing trees.</p>
<p>The head landscaper was going to approve the removal of the trees on the north boundary, allowing them to be replaced by trees that are only 1.5m high when planted, which is lower than the fence that is currently there! These new trees have to be minimum 4m high at maturity. How long until they get to maturity? If it takes 10 years then we have 10 years of no privacy. These new conditions, if approved, will severely impact on our privacy. This goes against the original conditions imposed by the DA where it says 'all trees on the development site shall be retained as indicated on the approved drawings'. How can Council go back on this? It was a condition of the DA that all trees be retained. (Despite this, several of the trees have been cut down during the build). This is not fair or right. We request council find another way to deal with the drainage issue. It cannot be resolved in a way that impacts on us.</p>	<p>The objector was advised that the Landscape Development Officer had drafted conditions requiring the replacement trees to be a minimum 1.5m at the time of planting, reaching a minimum 4m at maturity.</p> <p>This has now been amended so that the replacement trees must be a minimum 2.5m at the time of planting, reaching a minimum 6m at maturity.</p>
<p>The Landscape Development Officer has changed one condition for the upcoming meeting - that the trees be replaced with trees 2.5m minimum in height. I did not agree to this. If the trees must be removed then I requested council replace the trees with new ones exactly</p>	<p>The amended condition specifies that the replacement trees must be a minimum 2.5m at the time of planting, reaching a minimum 6m at maturity, which will achieve the privacy screening effect requested by the objector.</p>

the same height as those being removed (about 6-7 metres high) to maintain our privacy.	For practical reasons, the height of the replacement trees cannot be reasonably be greater than 2.5m. It must also be reiterated that the approved footprint conflicts with the existing trees, and that the damage is not a breach of the conditions.
We have concerns about any new conditions that may be imposed on this DA. If any new conditions are imposed, how will Council ensure they are adhered to properly?	A new/amended Construction Certificate must be obtained from the appointed Principal Certifying Authority who is responsible for monitoring compliance with the approval and issuing the Occupation Certificate.
<p>It is only fair that Council and the applicant for 59 Beach St put in extra conditions to compensate us for the complete removal of our privacy.</p> <p>Here are our conditions, at the expense of RCC Council and/or the owners of 59 Beach St.</p> <ul style="list-style-type: none"> Plant trees of our choice on our side of the fence minimum 3m high Put custom made framed timber lattice (that will be aesthetically pleasing and not just an add-on) along the top of the fence line in between our properties (roughly 13 metres and 1m high). Support pole goes from top of screen into ground. Timber lattice to be framed as well. See picture below for an example. Happy to provide more photos if required. Plant a Star Jasmine plant on our property that will grow on this timber lattice Put extra privacy screens on all 59 Beach St east facing balconies/windows Put plants on all 59 Beach St east facing balconies to provide extra screening 59 Beach St owners/contractors are not allowed to cut/trim or to ask us to cut/trim the height of the trees on our property 	<p>Replacement tree planting is conditioned to reach a minimum height of 6m, which will provide a screening effect similar to existing. Any additional landscaping conditions are considered unreasonably onerous, as there has not been a breach of the development consent in relation to tree impact from the approved footprint.</p> <p>Condition 2(a) of the development consent has imposed privacy screens for:</p> <ul style="list-style-type: none"> Full length of the northern side ground level balcony connected to the Master Bedroom; Full length of the southern and northern sides of the ground level rear balcony connected to the ensuite and retreat; and Full length of the southern and northern sides of the upper level rear balcony. <p>The positions of these privacy screens are suitable for mitigating privacy impact, while minimising bulk and maintaining the amenity of the subject dwelling.</p> <p>The canopy tree on the north-east corner is retained and provides supplementary screening.</p>
<p>We oppose the proposed amendment to remove the glazing condition of W26 and W27 and to instead put in place fixed privacy screen louvres.</p> <p>Glazing of these windows was a condition of the original DA approval. Removal of this glazing has already been rejected since the original DA approval. Now the applicant is coming back a third time. Why is this applicant allowed to keep coming back on the same thing over and over again? Removing the glazing and allowing fixed privacy screen louvres will impact on our privacy considerably, allowing the applicant to view directly into our external and internal living spaces and entertaining</p>	<p>Suitable privacy treatment is required for windows W26 and W27, which allows for views into the private open space of 6 Gordon Avenue.</p> <p>The privacy screen design presented by the applicant is not satisfactory in mitigating views. Hence, Condition 2(b) will be amended to either require the approved glazing treatment, or a privacy screen composed of fixed lattice/slats/louvres with individual openings not more than 30mm wide.</p>

D21/23

areas. The fixed louvres will also be bulky and unsightly overlooking our property. Council only approved this DA with conditions attached. How can they go back on this now?

- Windows W26 and W27 DO HAVE direct viewing of habitable rooms of the northern property house. See photos in the reports submitted by the applicant.
- The applicant relies solely on the visual screening provided by the bamboo plants WE have planted on OUR property. RCC planner Joseph Farag told me that plant screening does not come into consideration for visual privacy concerns, yet the applicant mentions it 6 times in their submissions to support their case previously.
- If these plants were to die, be poisoned, or blown over in a storm then the applicant would have even greater views into our habitable rooms and property.
- This bamboo is currently 5m high and we have been informed by an arborist that they will need to be trimmed at some stage because the weight/height will be too great and it will lean towards/into our pool. Therefore the height will not always be as it is, and visual privacy will be even more impacted.
- The applicant claims that it is inequitable to deny him better access to the northern sunlight and access to district views, especially when you consider that the open space of the northern neighbour is already compromised due to the low rear boundary wall and low lying nature of the site, whereby passers-by have direct viewing into the yard. Is this not a reason to prevent it from happening even more I ask you? This is laughable that the applicant would claim this at our expense, and that he is being disadvantaged compared to others. Does the applicant not realise that we are the ones actually being disadvantaged with his proposal?! Put another way, the applicant is saying that because everyone else is allowed to look into our property, then he should be allowed as well. This is laughable! Why does he think we put up the

<p>screening that took us 6 years to grow to its current height??</p> <p>We are happy for the applicant to get access to direct northern sunlight, but not at the expense of our privacy. I recommended to the RCC planner Joseph Farag that a compromise solution might be to have a "30cm high horizontal window, starting at "1.8m high, all the way along the top level. I assume this was proposed to the applicant and subsequently rejected, with no willingness to engage with us.</p> <p>The sketch submitted as additional information showing the proposed privacy screen for W26 and W27 and sightlines are not to scale and are not a good attempt by the applicant to satisfy the privacy concerns.</p> <p>We have provided bamboo screening which has taken 5 years to grow. We have put in blinds. Now the applicant is claiming that we have privacy from the very measures that we have provided.</p> <p>The applicant seems intent on solely relying on measures that we have put in place, and nothing that the applicant could do to protect our privacy.</p> <p>I fear we will need to put more plant screening in place if RCC decides the trees can be removed to satisfy the drainage issues. This despite it being a condition of the original DA approval that the trees NOT be removed.</p>	
<p>It was a condition in the DA/637/2019 for 59 Beach St, Coogee that glazed or opaque windows be used for the top 2 windows to ensure privacy of my house/property next door. It appears that the neighbour has installed see thru glass windows to these two top level windows. Can Council please investigate.</p>	<p>This matter was investigated by Council's compliance team and the matter was closed on 17/02/2023.</p>
<p>We object to the privacy screen W28 removal as it will significantly impact on our privacy and internal living spaces. It was a condition by Council in approving the original DA that this privacy screen be put there to prevent the applicant being able to look into our internal living spaces of living room, dining room, bedrooms and bathroom.</p> <p>W28 is high up and it affords a very good view into our living spaces, even with the trees there. Now the applicant wishes to have the trees in between us to be removed. If this were to happen to applicant would have an unobstructed view right into our living spaces! You can see what it would look like with the tree</p>	<p>The proposed modification of Condition 2(a) to remove the privacy screen for W28 is not supported due to adverse privacy impacts. Refer to Key Issues for further details.</p>

there in the photo. Imagine what it would look like if these trees were allowed to be removed.	
--	--

6. Key Issues

Amendment to Condition 2(a)

The approved Condition 2(a) has been reproduced below:

A privacy screen having a minimum height of 1.6m (measured above the deck or balcony floor level) of the following areas:

- *Full length of the northern side ground level balcony connected to the Master Bedroom;*
- *Full length of the southern and northern sides of the ground level rear balcony connected to the ensuite and retreat; and*
- *Full length of the southern and northern sides of the upper level rear balcony.*

All privacy screen/s must be constructed with either:

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

Privacy treatment shall be provided to W28 to ensure direct overlooking of neighbouring properties does not occur. The privacy screen must be constructed with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.

The proposal seeks to remove the privacy screen requirement for W28.

The Statement of Environmental Effects argues:

Removal of requirement to apply a privacy treatment to W28 as overlooking from this window is not possible due to its skilful location, size and orientation away from sensitive areas of neighbours. As per figure 3 which has been taken from an approximate location of W28, there is no unreasonable overlooking possible from this location. Unnecessarily screening W28 will limit natural lighting to the living room of 59 Beach Street, reducing the ability for the space to maximise passive design measures and increasing reliance on unsustainable artificial lighting.



Figure 3 – Approximate view from W28 (July 2022)

Window W28 is orientated east to the rear of the property, towards Gordon Bay of which coastal views are obtained. The window belongs to upper level living room. This living room is also provided with an east-facing glazed sliding door that opens out to a rear balcony. See below extract of upper level floor plan, with W28 highlighted in yellow.

A number of neighbour submissions have raised concerns that this modification will allow overlooking from W28 into south-facing bedroom windows of 6 Gordon Avenue.

The applicant's Statement of Environmental Effects justification relies upon the existing tree planting, shown in the above photo, to provide the sole privacy protection measure. These trees were also proposed to be removed under this modification to facilitate stormwater works; however, the stormwater plans have been amended to allow for the retention of trees along the rear site boundary, including the 8-10m tall canopy tree in the north-east corner. Further detail is provided in this Key Issues section below about the proposed tree works.

Although the trees along the rear boundary can now be retained, Clause 5.3(v), Part C1 of the DCP specifically states:

Screen planting and planter boxes may be used as a supplementary device for reinforcing privacy protection. However, they must not be used as the sole privacy protection measure.

As the landscape planting cannot be relied upon for privacy protection, the removal of privacy screening will facilitate overlooking from an indoor living area which is anticipated to be occupied for extended periods of time.

The applicant submitted additional information on 20 October 2022 to support the proposed privacy screen modification. This included the photo in Figure 4, which clearly demonstrates that without privacy screening, views of the adjoining property's bedroom window can be obtained from W28.

Architectural site plan for a residential development. The plan shows a central plot (3 DP 253509) with a house (2 DP 305688) and a balcony. The house has a Living area (8.0 x 4.3 TF), Kitchen / Dining (8.3 x 4.5 TF), and a Balcony (3.0 x 7.9). The balcony is labeled "Non-habitable balcony". The plan also shows a driveway, stairs, and various setbacks. Surrounding plots include 2 DP 305688, 3 DP 253509, and 3 DP 253509. The plan includes a scale bar (1:100 at A3) and a north arrow.

A wide-angle view from a construction site, likely a rooftop or elevated platform. In the foreground, a worker wearing a hard hat and safety gear is visible on the right, working on a metal structure. The background features a residential area with houses having blue and brown roofs, surrounded by lush green trees. In the distance, the ocean is visible under a bright blue sky with scattered white clouds. The overall scene depicts a construction project in a coastal residential area.

Page 124



Figure 4. Image submitted by applicant on 20/10/2022 showing view towards bedroom window of 6 Gordon Avenue.

As per Clause 5.3(i), Part C1 of the DCP:

All habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:

- *Offsetting or staggering windows away from those of the adjacent buildings.*
- *Setting the window sills at a minimum of 1600mm above finished floor level.*
- *Installing fixed and translucent glazing up to a minimum of 1600mm above finished floor level.*
- *Installing fixed privacy screens outside the windows in question.*
- *Creating a recessed courtyard on the side elevations of a building measuring not less than 3m x 2m in dimensions, with windows opening towards the courtyard in lieu of the common boundary.*

In this regard, the retention of the privacy screening measure is necessary to satisfy the above DCP provision.

In response to the Statement of Environmental Effect's claims about the negative impact of the screening on the subject dwelling – this living room is provided with east, north and west-facing windows and an east-facing glazed sliding door opening out to a rear balcony. This will satisfactorily facilitate natural sunlight and ventilation to this room. The east-facing sliding door will also provide ocean views to the living room. Additional views on this level can be accessed from the kitchen/dining room and the rear balcony. Hence, the deletion of privacy treatment is not considered imperative for the amenity of the subject dwelling. Nonetheless, the wording of Condition 2(a) provides flexibility in the design of the privacy screen – it must be constructed with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings. The condition can enable a skillful design that achieves the privacy requisites whilst maximizing the amenity of the room.

To conclude, the proposed modification to Condition 2(a) is not supported due to adverse privacy impacts.

Amendment to Condition 2(b)

The approved Condition 2(b) has been reproduced below:

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

- *W26 & W27 northern facing windows at upper level floor*

- *W22 south facing retreat window at ground level*

The modification application seeks to remove the glazing treatment requirement for W26 and W27. Instead, the applicant proposes to provide a fixed privacy screen.

The following photos demonstrate that a view of 6 Gordon Avenue can be obtained from the upper level.

As per the applicant's drawing in Figure 7, the privacy screens are proposed to be composed of horizontal slats, with 100mm gaps between each slat. The depth of the slat is 250mm. The drawing intends to show that there is no line of sight into the private open space. However, the drawing is not to scale and thus does not accurately demonstrate the line of sight.

The assessing officer conducted a site inspection at the subject site, which is currently under construction, on 29 September 2022. The applicant presented the construction of a mockup of the privacy screen design, as seen in Figure 6 – the mockup does not show all the proposed horizontal slats, which are intended to be spaced out by 100mm down to the sill. Nonetheless, the proposed horizontal slat design does allow views into the adjoining property through the large gaps. The slats are not appropriately spaced to mitigate privacy impact.

Thus, Condition 2(b) will be amended to either require the glazing treatment, or a privacy screen composed of fixed lattice/slats/louvres with individual openings not more than 30mm wide.



Figure 5. View from upper level, looking north from approximate location of window W26



Figure 6. View from upper level floor, looking north from approximate location of window W27. Applicant has constructed mockup of intended privacy screen design, composed of horizontal slats.

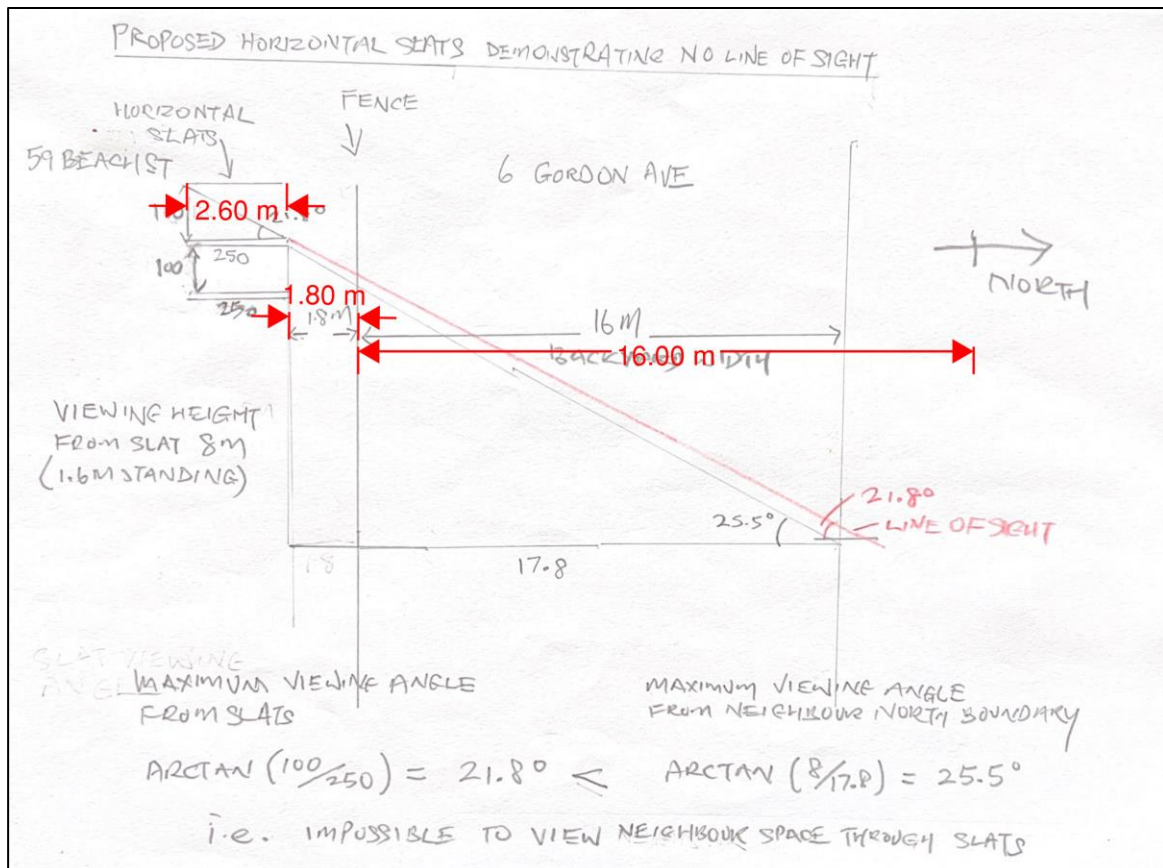


Figure 7. Proposed privacy screen and sightlines – submitted by applicant as additional information. The drawing is not to scale.

Deletion of Condition 2(d)

Condition 2(d) has been reproduced below.

All trees on the development site shall be retained as indicated on the approved drawings. Any removal would require development consent.

The applicant seeks to delete this condition to allow the removal of 6 non-protected trees along the northern boundary of the site.

The Statement of Environmental Effects provides the following rationale:

An approved stormwater pipe is located along this boundary and the roots of the 5 north-eastern-most trees are in the area marked for excavation for the stormwater pipe. Once dug, the trees will not survive and pose a danger to the new approved infrastructure. Furthermore, the 5 trees will pose a safety concern during construction as they will obstruct scaffolding required for the safe construction of the northern external wall and cladding. The removal of these 5 trees is therefore considered appropriate on stormwater and safety grounds. North-facing privacy measures on the building itself will prevent overlooking, rendering the trees of no use for screening or amenity purposes. Even if the trees were useful for privacy, planning principles established under Meriton v Sydney City Council [2004] NSWLEC 313 confirm that landscaping should be given little weight for screening purposes alone.

This matter has been reviewed by Council's Landscape Development Officer who has advised that:

- Condition 2(d) is not practical or achievable as the majority of vegetation did not meet the minimum threshold for protection under the DCP at the time of lodgement;
- Measurements taken on-site revealed that allowing the footprint to be extended as shown then placed the works only 700-800mm from a row of five established Camelias along the northern site boundary;

- The consent does not contain any 'Tree Protection' conditions which would have prohibited harmful aspects of the works and imposed suitable safeguards to successfully retain any eligible trees.
- Numerous major roots of the Camelias have been severed/damaged by construction of the new rear slab. These trees cannot be expected to remain stable, safe and survive into the future. Further works are required in this area.
- Despite the damage to the trees, this is not a breach of the consent, as the building is consistent with the approved footprint.
- On this basis, approval must be given for their removal, subject to suitable replacement screen planting being installed in the same area.
- The hydraulic plans have been amended and this allows for the retention of an 8-10m tall canopy tree in the north-east corner that is protected by the DCP.
- The various shrubs in the south-east corner are insignificant, so no objections area raised to their approval as part of excavations to connect

Neighbour submissions have raised concerns about the removal of trees on the northern side of the dwelling, in relation to privacy impact. These trees provide a screening effect to mitigate overlooking.

It must be reiterated that landscape planting cannot be relied upon for privacy protection, as per Clause 5.3(v), Part C1 of the DCP. Based on this, the privacy impact of the approved development was assessed in the absence of any screen planting.

Nonetheless, in response to the neighbour's concerns, Council's Landscape Development Officer has imposed conditions requiring replacement planting in the same area. The planting must be a minimum 2.5m in height at the time of planting, and be of a species that will achieve a minimum height of 6m at maturity. This will satisfactorily provide a similar privacy screening effect as the existing trees.

Thus, Condition 2(d) will be deleted and additional conditions will be included to address the tree matters.

7. Referral comments

Landscape Development Officer

A Section 4.55(2) application has been received to remove trees and change the type of privacy screen at the above site. Original Consent: Alterations and additions to existing dwelling at lower ground, ground and first floor levels (variation to height control).

This report is based on the following plans and documentation:

- Architectural Plans by Edifice Designs, rev E, dated 06/08/21;
- Amended Stormwater Drainage Plans & Details, dated 02/02/23;
- Statement of Environmental Effects by Corona Projects dated July 2022.

Tree & Landscape Comments

Neither the original application or the three subsequent modifications were referred to the Landscape Officer, with the applicant now seeking to delete condition 2, point d of the development consent, which was imposed by a Planning Panel, and reads as follows:

All trees on the development site shall be retained as indicated on the approved drawings. Any removal would require development consent.

However, this condition was not practical or achievable as firstly, the site survey confirms that some of vegetation did not even meet the minimum threshold for formal protection under the DCP at the time of lodgement; and secondly, measurements taken on-site have also revealed that the rear extension was approved at a minimal setback of only 700-800mm from a row of five Camelia's along the northern site boundary, which encroaches their SRZ's, with the adjoining neighbour at 6 Gordon Avenue advising in their objections that these trees are important for them in terms of screening,

privacy and preventing overlooking from the development site directly into their rear private open space.

It is also noted that the consent does not contain any specific 'Tree Protection' conditions which would have ensured that suitable safeguards were put in place to successfully retain any eligible trees.

At each of their request, separate on-site meetings were held with both the neighbour at no. 6 and applicant in order to gain a full understanding of all issues on either side of the situation.

Following this, Council requested further information from the applicant, with a subsequent inspection of a root mapping trench in the northern side setback on 05/12/22 confirming that numerous major, structural roots that are critical for the health and stability of these Camelia's had been severed/damaged during construction of the new rear slab, meaning there is no way they can now be expected to remain stable, safe and survive into the future. Further works are still required in this same area to repair/re-instate the sewer and drainage pipes/lines.

Despite damaging these trees, this is not regarded as a breach of the consent as the building is consistent with the approved footprint and does not contravene any of the conditions.

On this basis, approval must be given for their removal, subject to suitable replacement screen planting being installed back in this same area in their place, and as the neighbour at 6 Gordon Avenue has strongly reiterated their dissatisfaction that these Camelia's will be removed, and that 'like for like' sized replacements be installed back in their place, conditions specify the use of advanced stock to ensure the screening function continues into the future.

To the east of those discussed above, across the rear site boundary is a row of *Syzygium luehmannii* (Small Leafed Lilly Pillies) which again, as a group, are important for screening, privacy and minimising overlooking from the upper floors of this site into the adjoining property to the north, 6 Gordon Avenue, and even more so 8 Gordon Avenue which is immediately to the east.

The original hydraulic plans showed new pits and a large absorption trench being installed adjacent the rear terrace, which would have occupied most of the private open space and was then to be directed to the northeast site corner for connection into the existing easement.

The excavations required for these components would have impacted all of these Lilly Pillies, most notably a mature, 8-10m tall canopy tree in the northeast site corner that is protected by the DCP, so would have resulted in reduced amenity for both future occupants and the neighbours if any of these were removed.

However, further discussions with the applicant have now confirmed that the trench and pits referred to above are no longer necessary, with a revised hydraulic scheme (dated 02/02/23) showing their deletion, with connection to the easement to now be undertaken over in the opposite, southeast site corner, where there are only small, insignificant shrubs, with new conditions requiring that the new 100mm UPVC line that intersects the rear yard be positioned as close as possible to the footprint so as to achieve a greater offset from these trees and avoid root damage.

New Tree Protection conditions now need to be added to the consent to ensure those in the northeast site corner and across the rear boundary are adequately protected and retained.

The various shrubs in the southeast site corner are insignificant, so no objections are raised to their removal as part of excavations to connect into the easement, as shown on the amended stormwater plans and as referred to above.

8. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>Clause 100 of the EP&A Regulation requires that a new BASIX certificate be lodged for amended plans or where a section 4.55 modification makes a material change to the BASIX commitments as originally approved.</p> <p>The applicant has submitted a new BASIX certificate. The plans have been checked with regard to this new certificate and they are consistent with the requirements indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP:BASIX were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same.</p> <p>The proposed modifications to the privacy treatment of windows W26, W27 and W28 are not consistent with the objectives of the R2 Low Density Residential Zone; in that the proposed privacy impact will have an adverse impact on neighbouring residents. The removal of the privacy treatment of W28 is not supported, and conditions of consent will be imposed to require adequate privacy screening to Windows W26 and W27. Refer to Key Issues.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposed modifications to the privacy treatment of windows W26, W27 and W28 are not consistent with the objectives and controls of the Randwick Comprehensive DCP 2013. Specifically, these modifications do not satisfy Clause 5.3 Visual Privacy, Part C1 of the DCP. The removal of the privacy treatment of W28 is not supported, and conditions of consent will be imposed to require adequate privacy screening to Windows W26 and W27. Refer to Key Issues.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications to the privacy treatment of windows W26, W27 and W28 do not respond appropriately to the relevant planning controls and will not result in any significant adverse environmental impacts. Thus, the removal of the privacy treatment of W28 is not supported, and conditions of consent will be imposed to require adequate privacy screening to Windows W26 and W27.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	<p>The proposed modifications to the privacy treatment of windows W26, W27 and W28 do not promote the objectives of the zone. Accordingly, these elements of the proposal is considered to be against the public interest.</p> <p>Thus, the removal of the privacy treatment of W28 is not supported, and conditions of consent will be imposed to require adequate privacy screening to Windows W26 and W27.</p>

9. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality, with the following amendments:
 - The proposal to amend Condition 2(a) to remove the privacy screen requirement for window W28 is not supported because it will result in adverse privacy impact.
 - Condition 2(b) will be amended to allow the provision of a privacy screen as an alternative to the glazing treatment/sill height requirement. The privacy screen must be composed of fixed lattice/slats/louvres with individual openings not more than 30mm wide, in order to adequately mitigate privacy impact.
 - The proposal to remove Condition 2(d), which requires the retention of all trees is acceptable, and additional conditions are recommended for tree protection and tree replacement.

Responsible officer: Eunice Huang, Environmental Planning Officer

File Reference: DA/637/2019/D