

Randwick Local Planning Panel (Electronic) Meeting

Thursday 8 June 2023



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held in the Coogee Room on Thursday, 8 June 2023

Declarations of Pecuniary and Non-Pecuniary Interests

General Reports

GR2/23 Randwick Local Planning Panel Guidelines 1

Development Application Reports

D36/23 27 Boundary Street, Clovelly (DA/141/2022) 21

Kerry Kyriacou
DIRECTOR CITY PLANNING

General Report No. GR2/23

Subject: Randwick Local Planning Panel Guidelines

Executive Summary

- The Randwick Local Planning Panel (RLPP) was established in March 2018 and operates in accordance with the RLPP Guidelines, originally adopted by the panel on 22 March 2018. Periodic reviews of the Guidelines are undertaken to ensure best practice and that relevant legislative requirements are incorporated into the Guidelines. As part of the ongoing process, the current RLPP Guidelines are due for review in June 2023.
- On 18 October 2022, the Minister for Planning issued the latest Local Planning Panels Direction – Operational Procedures under section 9.1 of the *Environmental Planning and Assessment Act 1979*, effective from 1 February 2023.
- The RLPP Guidelines have been reviewed and amendments are proposed. The proposed changes include minor amendments to ensure greater consistency with the operational procedures as identified in the Ministerial Direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*, and includes a new section in relation to the consideration of advice from Design Review Panels.

Recommendation

That the amendments to the Randwick Local Planning Panel Guidelines be adopted.

Attachment/s:

1.  Draft RLPP Guidelines (June 2023 update)

Purpose

A Ministerial Direction pursuant to Section 9.1 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) has been issued, commencing 1 February 2023, which requires changes to the operation of Local Planning Panels (LPPs). The changes to the operation of local planning panels are intended to minimise corruption risks and reduce certainty about who will sit on the planning panels in order to make it more difficult to predict who will make decisions on particular projects, and in turn reduce the potential for applicants to influence or improperly lobby panel members.

A periodic review of the Guidelines, due to occur by 30 June 2023, has also been undertaken to ensure best practice processes for the Panel and to incorporate any relevant legislative requirements.

The purpose of this report is to identify the amendments made to the RLPP Guidelines for endorsement by the Randwick Local Planning Panel.

Discussion

Amendments are proposed to the RLPP Guidelines to ensure the ongoing efficient operation of the Panel and to provide clarity of operation. The proposed changes are outlined below under the respective headings of the Guidelines.

Chair

Proposed amendments as follows (amendments identified in bold):

- 1.1 *The chair is responsible for the management of the Panel's functions and operations, including managing conflicts of interest.*
- 1.2 ***The chair is to preside over panel meetings and other business.***
- 1.3 *The chair is to ensure the Panel fully discharges its responsibilities under the Act (including the relevant operational procedures), any other directions from Council, the code of conduct, and these Guidelines in a timely manner.*
- 1.4 *The chair is responsible for the good and orderly conduct of the Panel. The chair may do all things necessary to fulfil this responsibility.*
- 1.5 *The chair is to decide which panel members (or alternates) are to hear a matter prior to the meeting commencing.*
- 1.6 ***The chair must regularly rotate the independent expert members and the community representatives from the pool of appointed members to reduce opportunities to improperly influence panel members.***
- 1.7 *The chair and alternate chairs shall rotate presiding over meetings, or other business, as practicable, unless the chair or alternative chairs are unavailable for any reason.*
- 1.8 ***Alternate Chairs have the same role as the chair when presiding over a panel meeting or any other business.***

Independent expert members

Proposed amendments as follows (amendments identified in bold):

- 1.9 *The expert members can be interchanged as needed by the chair for reasons including:*
 - *a member has a conflict of interest;*
 - *a member is unable to attend on the day; and/or*
 - ***to ensure there is a level of randomization involved in which expert members and alternates hear a matter, through regular rotation of the members, to reduce opportunities to improperly influence members.***

Community representatives

Proposed amendments as follows (amendments identified in bold):

1.10 *A community representative can be interchanged as needed by the chair for reasons including:*

- *a member has a conflict of interest;*
- *a member is unable to attend on the day; and/or*
- ***to ensure there is a level of randomization involved in which community representatives and alternates hear a matter, through regular rotation of the representatives, to reduce opportunities to improperly influence representatives.***

Note: The representatives on the Panel have been appointed on the basis that their skills and attributes could be equally applied to any of the wards. Consequently, the choice of community representative for a meeting will consider factors such as: items in a particular ward, availability and rotation.

Review of Panel decisions

Proposed amendments as follows (amendments identified in bold):

1.13 *All of the processes detailed below for determination of a development application also apply to the determination of a request to review a decision under Division 8.2 of the Act.*

1.14 *The determination of a review application from a Panel decision shall be determined by different members **(including the chair)** of the Panel to those who made the original determination.*

Conflict of interests

Proposed amendments as follows (amendments identified in bold):

2.2 *Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual Panel member to identify a conflict of interests and take appropriate action.*

2.3 *All Panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on Council's website as soon as practicable.*

Note: If a Panel member becomes aware of a conflict of interest after they have signed their declaration of interests form, and the interest appears to raise a conflict with the proper performance of the member's duties, the member must, as soon as possible, disclose the nature of the interest and sign a new declaration of interests form.

2.4 *After a Panel member has disclosed a pecuniary interest in any matter, the member must not be present during any deliberation of the Panel with respect to the matter, or take part in any decision of the Panel with respect to the matter.*

Note: A contravention of this requirement does not invalidate any decision of the Panel.

2.5 ***Any disclosure made must be recorded in the Minutes by the panel and be made publicly available upon request.***

2.6 *A person who is in the pool of members appointed to the Panel, must limit and disclose development/planning related work in the Randwick Local Government Area.*

2.7 *A person who is in the pool of members appointed to the Panel, shall not represent an applicant, Council or submitter at a meeting of the Panel.*

Meetings

Proposed amendments as follows (amendments identified in bold):

3.1 *The Panel shall meet on the 2nd Thursday of every month (excluding January) unless there are insufficient applications to conduct a meeting.*

3.2 *If required, the Panel shall also meet on the 4th Thursday of the month or any other time as may be agreed by the chair.*

3.3 *The Panel is only required to hold a public meeting (as of August 2020) where the development application has attracted 10 or more unique submissions by way of objection.*

A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

3.4 A public meeting will normally be held **via teleconference (i.e. Microsoft Teams) or in certain circumstances in person**. Public meetings will be recorded and made publicly available on Council's website (see clause 25(3) of Schedule 2 of the Act).

3.5 Other applications that are required to be considered by the Panel that have not attracted 10 or more unique submissions by way of objection are to be determined at a non-public meeting (referred to as an "electronic meeting").

Site visits and briefings

Proposed amendments as follows (amendments identified in bold):

4.16 *The chair may elect for the Panel to undertake site inspections for applications that will be considered at a meeting. The Panel shall inspect the sites together, however in certain circumstances, such as COVID 19, site inspections may need to be undertaken independently and only from the public domain or as determined by the chair.*

4.17 *Appropriate Council planning staff shall accompany the Panel on site visits that are undertaken together.*

4.18 *Site visits should be conducted on the same day as the public meeting and will normally commence at 9.30am or as otherwise determined by the chair.*

4.19 *Site visits are solely to be used to identify and clarify issues with a proposal. At a site visit, a Panel member must not offer an opinion on the merit of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendation.*

4.20 *Adjoining and/or affected properties may be visited by the Panel at the discretion of the chair. It is not a requirement for the Panel to visit every objector's property, however, it may visit if the chair decides that the Panel's consideration of an application would benefit from viewing an objector's property. If so, the objector will be requested to provide access prior to the site visit.*

4.21 *Site visits are not to be used as a forum for applicants or objectors to address the Panel, however, the Panel may ask questions to clarify issues whilst visiting a site.*

4.22 *The panel may be briefed by council staff and any other person engaged in the assessment of the matter about the proposal. **On request, and at the chair's discretion, the applicant for a development application or planning proposal which is to be considered by the panel may brief the panel prior to its decision. Council staff are to be in attendance and ensure a written record is made of attendees and key issues discussed.***

- 4.23 *A written record of the site visit or briefing must be publicly available on the panel's website. For the purpose of this requirement, when a site inspection or briefing of the panel by Council Staff or an applicant is undertaken, a reference is included in the Minutes.*

Deferring a decision

Proposed amendments as follows (amendments identified in bold):

- 4.43 *The Panel may defer its determination to a subsequent meeting, or to be determined by circulation of papers outside of a meeting (refer to section 6 below).*
- 4.44 *If an application is deferred, the Panel shall provide reasons and advise of the procedures to be followed for determination of the application.*
- 4.45 *Where possible, a deferred application shall be determined by the same chair and Panel members **that presided over the original deferment**.*
- 4.46 *Unless the deferred application requires renotification, it should be determined through the circulation of papers outside of a meeting.*

Planning Proposals

Proposed amendments as follows (amendments identified in bold):

- 5.1 *When a planning proposal is referred to the Panel for advice, it is to be accompanied by an assessment report prepared by Council staff setting out recommendations in relation to the proposal, including whether or not the planning proposal should be forwarded to the Greater Sydney Commission under section 3.34 of the Act.*
- 5.2 *The advice from the Panel must be received before council considers whether or not to forward the planning proposal to the Greater Sydney Commission.*
- 5.3 *Prior to providing the advice, the Panel may request to be briefed by Council staff or other persons. If a briefing is conducted, a record of the briefing shall be published on Council's website that includes the time, date, attendees and key issues discussed.*
- 5.4 ***Planning proposals are able to be considered by an electronic circulation of papers.***

Consideration of advice from Design Review Panel

Proposed additional section under new heading as follows:

Consideration of advice from Design Review Panel

- 9.1 *Council assessment officers and the panel should consider the advice of any design review report in its assessment reports and in making a determination. The design review report may be used in the following ways:*
- a. *to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes;*
 - b. *to establish if the reasonable recommendations of the design review panel have been followed;*
 - c. *as evidence for refusing development consent where the advice of the design review panel has not been adopted.*
- 9.2 *In some instances, the panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:*
- a. *the application is poor and has not considered the advice of the design review panel – refusal.*
 - No return to design review panel**
 - b. *Application will require minor modifications – to be managed via conditions of consent.*

No return to design review panel

- c. *The application will require significant modification, the extent and nature of which requires advice from the design review panel.*

Return to design review panel**Strategic alignment**

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

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

Resourcing Strategy implications

Nil

Policy and legislative requirements

- Section 9.1 of the *Environmental Planning and Assessment Act 1979*
- Schedule 2 of the *Environmental Planning and Assessment Act 1979*

Conclusion

The proposed amendments to the Randwick Local Planning Panel Guidelines shall provide greater clarity on the operation of the Panel and ensure compliance with the Ministers direction under section 9.1 of the EP&A Act, effective from 1 February 2023.

Responsible officer: Angela Manahan, Executive Planner

File Reference: F2018/00147

CITY PLANNING

GR2/23

Randwick Local Planning Panel Guidelines

Adoption Date:
11 August 2022

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6

Responsible Department:
Development Assessment

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Introduction

The Randwick Local Planning Panel (Panel) is a local planning panel established for Randwick City Council (Council) under [Part 2, Division 2.5](#) of the Environmental Planning and Assessment Act 1979 (Act). It is responsible for determining certain [development applications](#) (and modifications) and providing advice on [planning proposals](#) (collectively referred to as applications in this guide).

Local planning panels (commonly referred to as Independent Hearing and Assessment Panels (IHAPs)) are mandatory for all councils in Sydney and Wollongong. They have been created to ensure that the process of assessment and determination of applications with a high corruption risk, sensitivity or strategic importance is transparent and accountable.

The Panel is comprised of four (4) members:

- Chair
- Two (2) expert members
- A community representative

The members for each meeting will be selected by the chair from the pool of members appointed to the Panel. Two alternate chairs have been appointed who will have the same role as the chair when presiding over a Panel meeting or other business.

This guide details how the Panel is to operate. It incorporates:

- Procedural requirements from the Act (refer to [Division 2.5](#) and [Schedule 2](#))
- Requirements from the [Local Planning Panels Direction – Operational Procedures](#) issued by the NSW Minister for Planning under section 9.1 of the Act; and
- Requirements from the [Local Planning Panels Direction – Planning Proposals](#) issued by the NSW Minister for Planning under section 9.1 of the Act; and
- Relevant provisions from the *IHAPs Overview and Best Practice Meeting Procedures* issued by the Department of Planning and Environment; and
- General requirements to ensure the efficient and effective operation of the Panel. While these requirements will generally be followed, they may be varied by the chair depending on the circumstances of a particular meeting or application or to respond to changed circumstances such as COVID 19.

A local planning panel is not subject to the direction or control of the council, except on matters relating to panel procedures and the time within which the panel is to deal with a matter, provided they are not inconsistent with the Directions of the Minister under section 9.1 of the Act.

1. Panel composition

Chair

- 1.1 The chair is responsible for the management of the Panel's functions and operations, including managing conflicts of interest.
- 1.2 The chair is to preside over panel meetings and other business.
- 1.3 The chair is to ensure the Panel fully discharges its responsibilities under the Act, (including the relevant operational procedures), any other directions from Council, the code of conduct, and these Guidelines in a timely manner.
- 1.4 The chair is responsible for the good and orderly conduct of the Panel. The chair may do all things necessary to fulfil this responsibility.
- 1.5 The chair is to decide which panel members (or alternates) are to hear a matter prior to the meeting commencing.
- 1.6 The chair must regularly rotate the independent expert members and the community representatives from the pool of appointed members to reduce opportunities to improperly influence panel members.
- 1.7 The chair and alternate chairs shall rotate presiding over meetings (unless the chair or alternative chairs are unavailable for any reason).
- 1.8 Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

Independent expert members

- 1.9 The expert members can be interchanged as needed by the chair for reasons including:
 - a member has a conflict of interest;
 - a member is unable to attend on the day; and/or
 - to ensure there is a level of randomization involved in which expert members and alternates hear a matter, through regular rotation of the members, to reduce opportunities to improperly influence members.

Community representatives

- 1.10 A community representative can be interchanged as needed by the chair for reasons including:
 - a member has a conflict of interest;
 - a member is unable to attend on the day; and/or
 - to ensure there is a level of randomization involved in which community representatives and alternates hear a matter, through regular rotation of the representatives, to reduce opportunities to improperly influence representatives.

Note: The representatives on the Panel have been appointed on the basis that their skills and attributes could be equally applied to any of the wards. Consequently, the choice of

community representative for a meeting will consider factors such as: items in a particular ward, availability and rotation.

Quorum

- 1.11 Where a quorum (3 members) for a meeting is not present, the meeting shall be deferred.

Randwick Local Planning Panel members

- 1.12 A list of current Randwick Local Planning Panel members is available on Council's website.

Review of Panel decisions

- 1.13 All of the processes detailed below for determination of a development application also apply to the determination of a request to review a decision under Division 8.2 of the Act.
- 1.14 The determination of a review application from a Panel decision shall be determined by different members (including the chair) of the Panel to those who made the original determination.

2. Conduct of Panel Members

- 2.1 All Panel members must comply with the [code of conduct](#) approved by the Minister for Planning.

Conflict of interests

- 2.2 Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual Panel member to identify a conflict of interests and take appropriate action.
- 2.3 All Panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on Council's website as soon as practicable.

Note: If a Panel member becomes aware of a conflict of interest after they have signed their declaration of interests form, and the interest appears to raise a conflict with the proper performance of the member's duties, the member must, as soon as possible, disclose the nature of the interest and sign a new declaration of interests form.

- 2.4 After a Panel member has disclosed a pecuniary interest in any matter, the member must not be present during any deliberation of the Panel with respect to the matter, or take part in any decision of the Panel with respect to the matter.

Note: A contravention of this requirement does not invalidate any decision of the Panel.

- 2.5 Any disclosure made must be recorded in the Minutes by the panel and be made publicly available upon request.

- 2.6 A person who is in the pool of members appointed to the Panel, must limit and disclose development/planning related work in the Randwick Local Government Area.
- 2.7 A person who is in the pool of members appointed to the Panel, shall not represent an applicant, Council or submitter at a meeting of the Panel.

Interactions with third parties

- 2.8 Panel members are not to discuss any matter that is to be considered by the Panel with councillors, the applicant, their consultants, parties who have made a submission, or any other person with an interest in the matter outside of the Panel meeting.

Note: This does not apply to persons employed by the Council to assess the matters to be considered by the Panel

3. Meetings

- 3.1 The Panel shall meet on the 2nd Thursday of every month (excluding January) unless there are insufficient applications to conduct a meeting.
- 3.2 If required, the Panel shall also meet on the 4th Thursday of the month or any other time as may be agreed by the chair.
- 3.3 The Panel is only required to hold a public meeting (as of August 2020) where the development application has attracted 10 or more unique submissions by way of objection.

A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

- 3.4 A public meeting will normally be held via teleconference (i.e. Microsoft Teams) or in certain circumstances in person. Public meetings will be recorded and made publicly available on Council's website (see clause 25(3) of Schedule 2 of the Act).
- 3.5 Other applications that are required to be considered by the Panel that have not attracted 10 or more unique submissions by way of objection are to be determined at a non-public meeting (referred to as an "electronic meeting").

4. Meeting procedures

- 4.1 The Panel has adopted the following procedures for its meetings:

RLPP meetings will be either:

- Public Meeting
- Electronic Meeting

- 4.2 The requirement for either a public or electronic meeting is set out by directions issued by the NSW Minister for Planning and Public Spaces, which are available to view through the NSW Department of Planning, Industry and Environment's [website](#).

- 4.3 Meetings will be held on the same day, commencing at 1.00pm on the Thursday for the public meeting, and the electronic meeting will commence at the conclusion of the public meeting.

- 4.4 At the public meeting, the panel will hear oral submissions from registered speakers and will generally then close the public meeting for deliberation and/or voting and determination (in confidential session).

- 4.5 At the conclusion of the public meeting (and the decision making process), the Panel will consider the matters on the electronic meeting agenda. Members of the public are unable to address the panel in relation to the matters on the electronic meeting agenda, however, may submit correspondence, up to the close of business 2 working days prior to the scheduled meeting date, that raises any additional matters not addressed in previous submissions.

Preparation of agenda & business paper

- 4.6 The agenda shall be prepared two weeks prior to the meeting and sent to the chair for approval.
- 4.7 No later than 10 days prior to the meeting, the chair shall approve the agenda and nominate which panel members (or alternates) are to sit on the Panel for that meeting.
- 4.8 Electronic copies of the business paper and associated plans and submissions shall be made available to panel members at least 6 days prior to the meeting. Hard copies of the business paper and plans shall be couriered to the nominated panel members (if required).

Notice of meetings

- 4.9 Notice of panel meetings (time and place) shall be provided through Council's website at least 6 days prior to the meeting.
- 4.10 Applicants and submitters shall be advised (in writing) when an application will be heard by the Panel.
- 4.11 Business papers for meetings shall be made publicly available on Council's website 6 days

preceding the meeting.

- 4.12 Any late submissions must be lodged at least 48 hours before the meeting. A late submission must be limited to addressing matters raised in the Business Paper such as responding to conditions or perceived errors of fact. It should not repeat information that has already been lodged. Any new information must be assessed by the relevant council staff prior to the meeting.

Notice of intention to address the public meeting

- 4.13 Any person wishing to address the Panel at a public meeting must register their intention to do so with Council by 12 noon on the day before the meeting. If any speaker wishes to use a PowerPoint presentation or the like, it must be received by Council by 12 noon on the day before the Panel meeting.
- 4.14 Unless the chair otherwise permits, the number of speakers shall be limited to one for and one against on each application. A person wishing to speak against an application must have already lodged a written submission on the subject application OR must provide a written summary (no longer than one A4 page) of the matters upon which they wish to address the Panel. Council must receive this summary at least 48 hours before the meeting.

Note: Additional speakers may be permitted if the chair considers that they are raising discrete different issues. Any requests for additional speakers must be received by 12 noon on the day before the meeting and approved by the chair before the meeting commences.

- 4.15 Councillors are able to address the Panel on any items. This is in addition to the other speakers. Any Councillor who wishes to address the Panel must register their intention to do so by 12 noon on the day before the meeting.

Site visits and briefings

- 4.16 The chair may elect for the Panel to undertake site inspections for applications that will be considered at a meeting. The Panel shall inspect the sites together, however in certain circumstances, such as COVID 19, site inspections may need to be undertaken independently and only from the public domain or as determined by the chair.
- 4.17 Appropriate Council planning staff shall accompany the Panel on site visits that are undertaken together.
- 4.18 Site visits should be conducted on the same day as the public meeting and will normally commence at 9.30am or as otherwise determined by the chair.
- 4.19 Site visits are solely to be used to identify and clarify issues with a proposal. At a site visit, a Panel member must not offer an opinion on the merit of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendation.
- 4.20 Adjoining and/or affected properties may be visited by the Panel at the discretion of the chair. It is not a requirement for the Panel to visit every objector's property, however, it may visit if

the chair decides that the Panel's consideration of an application would benefit from viewing an objector's property. If so, the objector will be requested to provide access prior to the site visit.

- 4.21 Site visits are not to be used as a forum for applicants or objectors to address the Panel, however, the Panel may ask questions to clarify issues whilst visiting a site.
- 4.22 The panel may be briefed by Council staff and any other person engaged in the assessment of the matter about the proposal. On request, and at the chair's discretion, the applicant for a development application or planning proposal which is to be considered by the panel may brief the panel prior to its decision. Council staff are to be in attendance and ensure a written record is made of attendees and key issues discussed.
- 4.23 A written record of the site visit or briefing must be publicly available on the panel's website. For the purpose of this requirement, when a site inspection or briefing of the panel by Council Staff or an applicant is undertaken, a reference is included in the Minutes.

Public meeting

- 4.24 The public meeting shall commence at 1pm.
- 4.25 Electronic audio recordings shall be made of public meetings and these recordings shall be made publicly available on Council's website.
- 4.26 The chair/alternate chair, or in the absence of the chair/alternate chair, a member appointed by the Panel, is to preside at the meeting.
- 4.27 Speakers shall be heard for each item in the agenda in the following order:
- Councillor/s
 - Objector (or representative) speaking against the application; and then
 - The applicant (or the applicant's representative) speaking for the application.

Note: The chair may vary the order of presentations if required.

Unless the chair otherwise permits, there shall be no more than one speaker against and one speaker for each application. This is in addition to any councillors who wish to address the Panel.

- 4.28 A person is not entitled to be legally represented at any meeting of the Panel unless the chair grants permission. In granting any such permission, the chair shall have regard to the following matters;
- the nature and complexity of the matter and whether it involves a question of law,
 - whether the person has the capacity to present their submission without legal representation, and
 - such other matters as the chair considers relevant.
- 4.29 Unless the chair otherwise permits, no speaker may address the Panel for more than 3 minutes in respect of any one matter at any particular meeting. The chair may allow for an extension of time to enable relevant issues to be adequately addressed.
- 4.30 A person, other than a member of the Panel, shall not speak while another person is

speaking or otherwise interrupt that person while speaking.

- 4.31 Panel members may seek to clarify any matter with a speaker or Council officer.
- 4.32 Speakers (and all other people attending the public meeting) must refrain from engaging in disorderly conduct, or making potentially defamatory statements. If this behaviour occurs, the chair may ask the person to stop speaking and/or leave the meeting, or may adjourn the meeting.
- 4.33 The chair may adjourn the public meeting where a Panel briefing is required to hear confidential or sensitive information.

Before the adjournment the chair should publicly state the reasons for the adjournment which should be recorded in the meeting minutes.
- 4.34 The Panel is not bound by the rules of evidence and may inquire into and inform itself on any matter, in such manner as it thinks fit, subject to the rules of natural justice and procedural fairness.
- 4.35 The Panel is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- 4.36 The panel meeting is for decision making and not an avenue to present new information or plans that may require further assessment by council staff. The chair has discretion to decide whether to accept material presented at the Panel meeting.
- 4.37 Following the address from councillors, objectors and applicants on all matters scheduled for that meeting, the chair shall adjourn or close the public meeting unless a decision is made to deliberate in public (Refer to 'Deliberation and Voting' below).

Deliberation and voting

- 4.38 In accordance with Part 3 of the *Local Planning Panels Direction – Operational Procedures* issued by the Department of Planning and Environment, the chair may choose how to manage the deliberation and voting process. The options include:
 1. Deliberate, vote and make a determination in the public meeting;
 2. Adjourn the public meeting to deliberate and reconvene the meeting for voting and determination; or
 3. Close the public meeting, deliberate, vote and then notify the public of the outcomes outside the public meeting.The normal procedure for the Panel will be to adopt option 3 and close the public meeting prior to deliberation and voting. However, the chair has discretion to adopt the procedures detailed in options 1 or 2 above) for any item on the agenda. For example, it may be appropriate to adopt option 2 when dealing with contentious matters with significant impacts on the broader community; or option 1 for simple matters that can be determined without a lengthy deliberation process. Thereasons for varying the normal procedures shall be articulated by the chair and recorded in the meeting minutes.

The procedures detailed in these guidelines relate the normal procedures that will be followed (option 3)
- 4.39 After the public meeting has been closed, the Panel shall attend a closed session to

deliberate and vote on each matter. Only voting members of the Panel (and Council staff, for administrative support and if matters require clarification) are able to attend the closed session.

- 4.40 For each item on the agenda, the Panel shall:
- prepare a draft written resolution, including reasons; and
 - vote on the resolution.
- 4.41 A decision supported by a majority of the votes is the decision of the Panel. In the event of an equality of votes, the chair (or presiding member) has a second or casting vote.
- 4.42 If a Panel member has a dissenting view to the majority, this view is to be formally documented and recorded in the Panel's reasons for its decision.

Deferring a decision

- 4.43 The Panel may defer its determination to a subsequent meeting, or to be determined by circulation of papers outside of a meeting (refer to section 6 below).
- 4.44 If an application is deferred, the Panel shall provide reasons and advise of the procedures to be followed for determination of the application.
- 4.45 Where possible, a deferred application shall be determined by the same chair and Panel members that presided over the original deferment.
- 4.46 Unless the deferred application requires renotification, it should be determined through the circulation of papers outside of a meeting.

Delegating a decision

- 4.47 The Panel may delegate the determination of an application to Council staff.
- If determination of an application is delegated to Council staff, the Panel shall provide reasons.

Post-meeting procedures

- 4.48 Minutes of the meeting shall include the decision, the outcome of voting and the reasons for the decision.
- 4.49 All voting Panel members shall review and sign the minutes after the meeting.
- 4.50 A copy of the minutes shall be made publicly available on Council's website.
- 4.51 All parties that made written submissions shall be advised of the outcome in writing.
- 4.52 The Notice of Determination shall be provided to the applicant.
- 4.53 Should the Panel resolve to defer or delegate determination of an application, the applicant shall be advised (in writing) and requested to provide the required additional information and/or amended plans within the time period specified by the Panel.

5. Planning proposals

- 5.1 When a planning proposal is referred to the Panel for advice, it is to be accompanied by an assessment report prepared by Council staff setting out recommendations in relation to the proposal, including whether or not the planning proposal should be forwarded to the Greater Sydney Commission under section 3.34 of the Act.
- 5.2 The advice from the Panel must be received before council considers whether or not to forward the planning proposal to the Greater Sydney Commission.
- 5.3 Prior to providing the advice, the Panel may request to be briefed by Council staff or other persons. If a briefing is conducted, a record of the briefing shall be published on Council's website that includes the time, date, attendees and key issues discussed.
- 5.4 Planning proposals are able to be considered by an electronic circulation of papers.

6. Transaction of business outside meetings

- 6.1 A Panel may, if it thinks fit, transact any of its business by the circulation of papers (electronically or in hard copy) among all the members of the Panel. A resolution approved in writing by a majority of those members is taken to be a decision of the Panel.

The chair and each member of the Panel have the same voting rights as they have at an ordinary meeting of the Panel.

The resolution is to be recorded in the minutes of the meetings of the Panel.

- 6.2 A Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

7. Obligation to consult with Council

- 7.1 The Panel must not exercise a function that will result in the making of a decision that would have, or that might reasonably be expected to have, a significant adverse financial impact on Council until after it has consulted with Council.

The consultation may be in writing, with Council being given a specified time to respond in writing. Where a meeting with the General Manager (or delegate) is held to discuss the matter, all relevant Panel members should be present and minutes kept of the meeting and its outcomes.

8. Control and Direction of Court Appeals

Pursuant to Section 2.20(8) of the EPA Act, the Panel has delegated to Council's General Manager, Director City Planning and Manager Development Assessment the functions of the Panel under Section 8.15(4) of the EPA Act in respect of the control and direction of Appeals subject to the following:

- I. As required by Section 8.15(4) of the EPA Act, Council is to give notice to the Panel Chair and Alternate Panel Chair (electronically) of all Appeals relating to the determination or decision of the Panel or any deemed refusal within 7 days of the Appeal being served.
- II. In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, either the General Manager, Director City Planning or Manager Development Assessment will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal within 5 business days of the notice of service of the appeal.
- III. In the case of all Appeals relating to a determination or decision of the Panel, either the General Manager, Director City Planning and Manager Development Assessment will keep the Panel Chair that made the determination or decision (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.
- IV. In the case of an Appeal being lodged relating to a deemed refusal of a development application, that application shall be referred to the first practical meeting, following the date that the Appeal was served, for determination or decision by the Panel. If it is not practical to provide a report, the Chair (or the Chair's nominee) shall be consulted prior to any Statement of Facts and Contentions being filed with the Court. Should there be no opportunity to consult with, or a response to a draft Statement of Facts and Contentions not be received from, the Chair (or the Chair's nominee) at least two business day prior to the date required for the filing of the Statement of Facts and Contentions the General Manager, Director City Planning or Manager Development Assessment shall have delegation to settle the Statement of Facts and Contentions without consultation or a response.
- V. The Council shall circulate a memo to all Panel members quarterly on the status of all Appeals relating to the determination or decision of the Panel and deemed refusals which would, but for the appeal, have come before the Panel. If an agreement under Section 34 of the Land and Environment Court Act has been made, the memo shall include reasons sufficient to demonstrate how the Panel's determination was addressed in the Section 34 agreement.

9. Consideration of advice from Design Review Panel

- 9.1 Council assessment officers and the panel should consider the advice of any design review report in its assessment reports and in making a determination. The design review report may be used in the following ways:
- to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes;
 - to establish if the reasonable recommendations of the design review panel have been followed;
 - as evidence for refusing development consent where the advice of the design review panel has not been adopted.
- 9.2 In some instances, the panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:
- the application is poor and has not considered the advice of the design review panel – refusal.
No return to design review panel
 - Application will require minor modifications – to be managed via conditions of consent.
No return to design review panel
 - The application will require significant modification, the extent and nature of which requires advice from the design review panel.
Return to design review panel



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1300 722 542
council@randwick.nsw.gov.au
www.randwick.nsw.gov.au

Randwick City Council
30 Frances Street
Randwick NSW 2031

Development Application Report No. D36/23

Subject: 27 Boundary Street, Clovelly (DA/141/2022)

Executive Summary

Proposal:	Alterations and additions to existing residential flat building including an additional level replacing the existing roof
Ward:	North Ward
Applicant:	Mr J Mulders
Owner:	Boksburg-Benoni Pty Ltd
Cost of works:	\$2,786,359
Reason for referral:	Floor Space Variation (50.83%) and the development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings

Recommendation

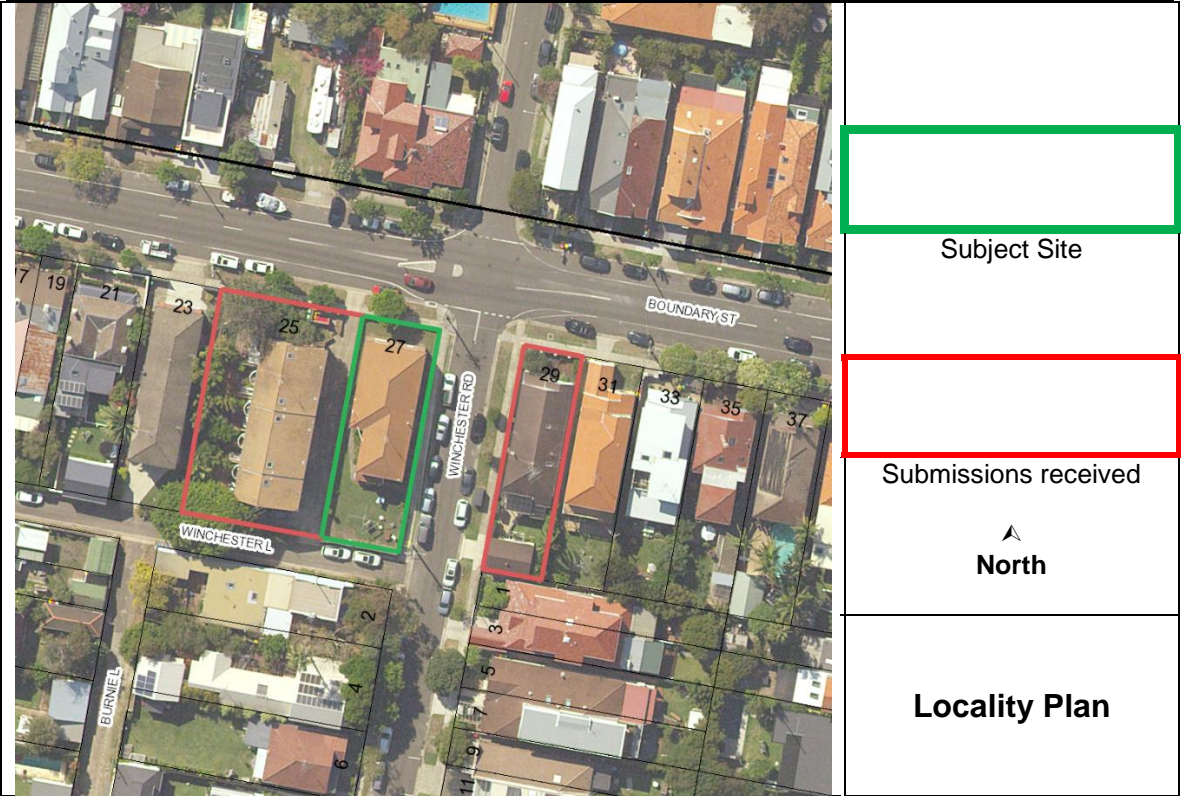
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Height of Building & Floor Space Ratio development standards in Clause 4.3 & 4.4, respectively of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment has been assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/141/2022 for alterations and additions to existing residential flat building including an additional level replacing the existing roof, hardstand carspace and landscape works, at No. 27 Boundary Street, Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

Nil

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the proposed development contravenes the development standard for floor space ratio by more than 10% and is subject to SEPP 65 – Design Quality of Residential Apartment Development (SEPP 65) as the building is 3 or more storeys and contains at least 4 dwellings.

The proposal seeks development consent for alterations and additions to the existing two storey residential flat building which includes a new loft style third floor level, extension to the rear of the building, rear hardstand carspace and landscape works. The proposed residential flat building is prohibited in the R2 Zone and therefore, relies on the Existing Use Rights provisions under Clause 4.67 of the Act.

The application also proposes a variation to Height of Building development standard in the Randwick LEP 2012.

The proposed development is generally consistent with the relevant planning provisions including SEPP 65 and associated design guidance within the Apartment Design Guide (ADG), the relevant objectives of the Randwick LEP 2012 and Randwick DCP 2013 with particular regards to low density residential.

The proposal was notified in accordance with Council's Community Participation Plan and five (5) submissions by way of unique objection were received with the key issues primarily relating to non-compliance to height of building and FSR development standards and associated bulk and overshadowing impacts, privacy, loss of parking and traffic congestion.

The key issues associated with the proposal relate to the variation to the Height of Building and FSR development standards, parking, overshadowing, the existing use rights pertaining to the site and the nature of the development being a RFB within the R2 low density residential zone. The applicant has submitted written requests to vary the standards, which are considered to be well-founded as the overall bulk, scale and built form of the development is considered to be compatible in character with other development in the immediate streetscape and will not result in any

unreasonable amenity impacts upon adjoining and surrounding properties or streetscape, subject to the recommendations within the report.

The proposal is recommended for approval subject to non-standard condition relating to privacy, loss of Affordable Rental Housing Contributions, ADG sustainability recommendations and compliance with the BCA and relevant standards.

2. Site Description and Locality

The subject site is known as 27 Boundary Street, Clovelly and is legally described as Lot 1 in DP 84977. The site is 467.8m², is regular in shape and has a 12.8m frontage to Boundary Street and 36.545m to Winchester Road.

The site slopes to the rear by approximately 1m from the frontage to Boundary Street through to Winchester Lane. There is a slight cross fall from the western boundary through to the eastern boundary of approximately 0.5m.

The site contains an existing two storey residential flat building containing six one-bedroom apartments. The ground and first floor levels each comprise three units.

The surrounding area comprises a mixture of housing types which include three-four storey residential flat buildings, semi-detached and detached dwellings houses.

The adjoining the subject site to the west at No. 25 Boundary Street is a three storey residential flat building comprising two levels of residential apartments above ground level garages.

Adjacent the subject site to the north, south and east are single storey detached and semi-detached dwellings.



Figure 1: Subject site at the corner of Boundary Street & Winchester Street

3. Relevant history

A search of Council's records revealed the original development consent for the existing flat building was approved under BA/223/1940.

As a residential use and recent rental history, it is presumed to have been a continuous use since that time. The land has been used for residential purposes for an extended period of time.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing two storey residential flat building which includes a new loft style third floor level and extension to the rear of the building.

The internal reconfiguration works include removal of walls and replacement with open plan living, dining and kitchens with new enlarged bedrooms and bathrooms. All units will be provided with dedicated private open space in the form of ground level gardens and upper level balconies. Units 4, 5 & 6 will be converted to double storey units with upper level loft bedrooms and bathrooms.

Table 1 – Overview of Unit Changes

Unit No.	Existing	Proposed
1	Single storey, 1 Bedroom	Single storey (53.02m ²), 1 Bedroom with 18.24m ² POS
2	Single storey, 1 Bedroom	Single storey (57.50m ²), 1 Bedroom with 17.85m ² POS
3	Single storey, 1 Bedroom	Single storey, 2 Bedroom with 77.53m ² of area and 48.49m ² POS resulting from demolition of existing paved area and shared laundry.
4	Single storey, 1 Bedroom	Two-storey loft style apartment with 2 Bedrooms and new 8.99m ² balcony POS.
5	Single storey, 1 Bedroom	Two-storey loft style apartment with 2 Bedrooms and new 9.06m ² balcony POS.
6	Single storey, 1 Bedroom	Two-storey loft style apartment with 3 Bedrooms, study and new 10.82m ² balcony POS.

External works proposed include new window and door openings to private open space courtyards and balconies plus car pace. A new pitched roof structure constructed over the new third level (second floor) and connected to the replacement drainage infrastructure on the site.

The proposed changes also include provision of a new open hardstand carspace to the rear which will be directly accessible from Winchester Lane via a new vehicular cross-over and formalizing a new communal open with new gates and internal privacy fencing.

Amendments

The proposal was amended on multiple occasions during the assessment process in response to issues and request for additional information by Council. The key amendments are summarised as follows:

- Landscape plan has been updated to include 4 additional trees, BBQ, clothesline facilities, furniture and BBQ area;
- Additional storage area is provided to the units;
- Additional kitchen benching is provided to Units 3, 4 & 6;
- Laundry areas have been included or modified;
- Waste bin is relocated to the western end of the communal open space;
- New secure bicycle parking and storage with bollards is provided to the northern end of the carspace;
- A 1.6m high privacy screen is proposed to the western side of the deck area of Unit 3;
- Ceiling heights on all levels have been noted on the sections;

The assessment is based on the amended plans received by Council on 20 April 2023.



Figure 2: Photomontage of existing and proposed development as viewed from Winchester Street

5. Notification

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

- 1/25 Boundary Street, Clovelly
- 2/25 Boundary Street, Clovelly
- 4/25 Boundary Street, Clovelly
- 5/25 Boundary Street, Clovelly
- 29 Boundary Street, Clovelly

Issue	Comment
<p><u>Non-compliant Floor Space Ratio (FSR)</u></p> <p>The proposed development significantly exceeds the allowable FSR limit on the site of 0.5:1 and will result in visual bulk impacts.</p>	<p>See Clause 4.6 assessment for consideration of the FSR variation.</p>
<p><u>Increase density impacts, loss of parking and traffic congestion</u></p> <p>Parking space including visitors parking space does not comply. The extra bedrooms will increase the density on the site resulting in off-street parking pressure on surrounding streets which are currently congested.</p> <p>The additional car parking space on the site will result in a loss of car parking to local residents.</p> <p>The traffic document proposes the Go-Get car space in front of the power pole which is in</p>	<p>An assessment has been carried out by Council Development Engineers and notes:</p> <p>The proposal provides 1 share car parking spaces for the six (6) units which is in accordance with the Parking requirement and therefore any impact on street carparking is likely to be minor and acceptable.</p> <p>The site is located in proximity to public transport services. The proposed parking arrangement has been reviewed by Council's Engineer who raises no objection subject to conditions of consent.</p>

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Issue	Comment
<p>close proximity of the intersection of Winchester Road and Winchester Lane, in what is now a no stopping area and is directly opposite the driveway of the garage at no. 29 Boundary Street. If this carspace is approved, the owner of no. 29 Boundary Street is concerned that they will no longer be able to exit their garage which would reduce their amenity.</p> <p>The property owner of No. 29 Boundary Street disagrees with the Traffic document lodged stating that there will be no parking impacts. The addition of one carspace on the site is not going to ease parking conditions in the immediate area as in reality there is a shortage of parking in the vicinity due to the ratio of cars to households.</p>	
<p><u>Loss of privacy and inadequate building separation</u></p> <p>The windows proposed on the second floor will have direct overlooking into the bedrooms of the neighbouring building at No. 25 Boundary Street.</p> <p>Questions whether, the proposed development complies with the minimum separation distance between buildings as the limited separation between the buildings result in privacy impacts.</p> <p>The rear setback of 29 & 27 Boundary Street currently aligns with each other. The rear extension of the building to the south by approx. 5m means the entirety of this extension with its new windows and balcony will be directly adjacent the rear yard on No. 29 Boundary Street and will have direct overlooking impacts into the rear yard and living room windows.</p>	<p>As shown in figure 2 above, the existing rear-built form does not align with no. 25 Boundary Street and extends further than the subject site. The building is setback approx. 5m from the rear boundary. The proposed rear setback on the subject site is 8m which is much greater than the setback of the neighbouring building at No. 25 Boundary Street and whilst the rear setback requirement does not technically apply to the site as it enjoys existing use rights, the proposed development will meet the setback requirements in the DCP.</p> <p>Appropriate privacy measures have been implements. Refer to Section 9.1 Discussions of Key Issues which address privacy.</p>
<p><u>Non-compliant Building Height & overshadowing impacts</u></p> <p>The proposed building height exceeds the allowable control height limit of 9.5m by 919mm equating to a maximum breach of 9.6% variation and will be inconsistent with the development control objectives. The changes proposed to the building and roof ridge will increase overshadowing and reduce solar access to neighbouring properties.</p> <p>The shadow assessment impacts do not appear to be correct.</p> <p>Oversized unit block in a residential area and the size and scale of the development is not</p>	<p>The non-compliance with the Building Height development standard will not result in any significant amenity impacts from the adjoining properties with particular regards to solar access.</p> <p>Refer to the Key Issues section of this report and Clause 4.6 assessment for consideration of the Height of Building variation.</p> <p>A full assessment of solar access to the neighbouring property is provided under the Key Issues section of this report. On merit the impact is considered to be acceptable.</p>

Issue	Comment
<p>compatible with the desired future character of the locality.</p> <p>The upper-level addition is not visually appealing and does not match the original form of the lower part of the existing building.</p>	
<p><u>Loss of skyline view</u></p> <p>The proposed development will result in significant visual amenity impacts cutting off a large portion of skyline views from neighbouring development.</p> <p>This will potentially devalue their properties.</p>	<p>The rear addition on the ground and first floor level is setback greater than the minimum control requirement for side and rear setbacks under the RDCP for residential flat buildings and will allow for some skyline views to be retained. The attic addition is recessed from the main built form and complies with the setback controls with the exception of the dormer windows to Units 4 (1.74m) and 5 (1.65m).</p> <p>These non-compliance sections are considered acceptable in that the dormer windows provides articulation to the roof design breaking up the wall elements and has minimal environmental amenity impacts on neighbouring properties and streetscape. The dormer windows blend in with the design of the roof and remains consistent with the objectives.</p> <p>With regards to potential devaluation of property, this issue is not considered to be a planning related matter, which can be addressed under Section 4.15 of the EP&A Act.)</p>
<p><u>Congestion and noise due to construction</u></p> <p>A DA has already been submitted for 29 Boundary Street, concerned that if this development goes ahead there will be added congestion and noise from two simultaneous construction projects on the same corner block on an already busy traffic area.</p>	<p>Appropriate conditions have been included within this consent to limit any potential noise impacts which may arise during construction. Also, a condition is included which restricts the working hours for all demolition and site work, including site deliveries from Monday to Friday - 7.00am to 5.00pm and Saturday - 8.00am to 5.00pm; and for excavating of rock, use of jack-hammers, pile-drivers, vibratory rollers/ compactors or the like the hours are restricted to Monday to Friday from 8.00am to 5.00pm. Also, no work is permitted on Sunday & public holidays. These are the standard hours for all construction activity in the Randwick locality.</p>
<p><u>Location of the bins</u></p> <p>The relocation of the bin area to the eastern side of Winchester Road will be directly opposite the living room windows of No. 29 Boundary Street. The bins are no screened appropriately and will have visual amenity impacts on this property and streetscape.</p>	<p>The bin area has been relocated to the western side of the communal area and is adjacent to the car space which is located to the south western corner of the site.</p> <p>The bins have been screened with planting and is enclosed from the car space.</p>

5.1. Renotification

Amended plans have been received by Council on 20 April 2023 to address concerns relating to building height and privacy.

The amended development is not required to be renotified as the proposed changes are reducing the impacts on neighbouring properties and streetscape.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policy 65 - Design Quality of Residential Apartment Developments

The proposal was considered by the design review panel who were generally supportive of the application and its bulk and scale subject to some minor amendments. Several amenity concerns were raised in relation to privacy, landscaping and accessibility on the site. Majority of these concerns have either been resolved or conditions have been included within the consent addressing these concerns.

The panels suggestion requiring greater accessibility to be included in the design, especially to the apartment entries would be difficult to achieve and Councils Planner does not believe this is warranted given the low scale nature of the apartments. It would be unreasonable to request this design change when the proposed development is largely contained within the existing built form and substantial modifications would need made which might not be feasible.

The proposed alterations shall provide better amenity for occupants and would be consistent with the design quality principals set out in Schedule 1 of SEPP 65. Refer to SEPP 65 section of this report for details under Appendix 1.

6.2. State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021. The Housing SEPP aims to deliver more affordable and diverse forms of housing, including co-living housing and independent living units. It marks the completion of phase three of the NSW Government's housing reforms.

The subject site contains a residential flat building that is currently under single ownership and is subject to Part 3 Retention of existing affordable rental housing.

Part 3 Retention of existing affordable rental housing

The subject site contains an existing residential flat building that is currently under single ownership. As the building has not been strata subdivided, nor is social housing provider accommodation or housing for seniors or people with a disability, consideration was given to whether the provisions of Part 3 of SEPP ARH in relation to the retention of affordable rental housing was applicable.

Part 3 Retention of existing affordable rental housing, pursuant to the SEPP (housing) is applicable to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss pursuant to Section 48 of the SEPP (housing).

The SEPP (housing) defines a low-rental residential building as follows:

low-rental residential building means a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that –

- (a) *is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or*
- (b) *was used as a residential flat building containing a low-rental dwelling or as a boarding house, but the use has been changed unlawfully to another use, or*

- (c) *is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.*

The SEPP (housing) defines a low-rental dwelling as follows:

low-rental dwelling means a dwelling that was let at a rental level no greater than the median rental level, as specified in the Rent and Sales Report, during the relevant period in relation to a dwelling -

- (a) of the same type, and
- (b) with the same number of bedrooms, and
- (c) in the same local government area.

The relevant period is defined as “*the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.*”

The Applicant submitted details of the rental history provided by the agent on behalf of the owner of the rents received in the 5 year period prior to the lodgement of the application.

Based on Council’s records and the documentaiton provided, the building contains six (6) x one (1) bedroom units.

The quarterly rent and sales reports published by NSW Government Communities & Justice Department for the relevant period provides the following data:

Median rent of Units in Randwick LGA

Quarter	Median Rent – 1 Bedroom
March 2017	\$530
June 2017	\$520
September 2017	\$520
December 2017	\$530
March 2018	\$525
June 2018	\$520
September 2018	\$510
December 2018	\$500
March 2019	\$500
June 2019	\$500
September 2019	\$480
December 2019	\$500
March 2020	\$500
June 2020	\$450
September 2020	\$450
December 2020	\$430
March 2021	\$450
June 2021	\$450
September 2021	\$450
December 2021	\$470

Table 1: Quarterly rent and sales reports

The information submitted to Council identifies that the six (6) existing units have been rented out as follows:

Quarter	Meduim Rental Unit	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
March 2017 (\$530)		\$586.60	\$465 (Under Medium threshold)	\$651.78	\$510 (Under Medium threshold)	\$640	\$640
June 2017 (\$520)		\$586.60	\$465	\$651.78	\$510	\$640	\$640

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		(Under Medium threshold)		(Under Medium threshold)		
September 2017 (\$520)	\$586.60	\$465 (Under Medium threshold)	\$651.78	\$510 (Under Medium threshold)	\$640	\$657.78
December 2017 (\$530)	\$586.60	\$465 (Under Medium threshold)	\$651.78	\$510 (Under Medium threshold)	\$640	\$657.78
March 2018 (\$525)	\$550	\$480 (Under Medium threshold)	\$600	\$597.46	\$640	\$657.78
June 2018 (\$520)	\$550	\$480 (Under Medium threshold)	\$600	\$597.46	\$640	\$657.78
September 2018 (\$510)	\$550	\$480 (Under Medium threshold)	\$600	\$597.46	\$640	\$657.78
December 2018 (\$500)	\$550	\$480 (Under Medium threshold)	\$600	\$597.46	\$640	\$657.78
March 2019 (\$500)	\$597.47	\$480 (Under Medium threshold)	\$600	\$597.46	\$640	\$492.75 (Three weeks odd deposit anomal as vacated earlier that the monthly term payment)
June 2019 (\$500)	\$597.47	\$480 (Under Medium threshold)	\$600	\$597.46	\$620	\$600
September 2019 (\$480)	\$597.47	\$480 (Under Medium threshold)	\$600	\$598	\$785.7	\$600
December 2019 (\$500)	\$597.47	\$480 (Under Medium threshold)	\$600	\$550	\$597.47	\$600
March 2020 (\$500)	\$401.93 Under Medium threshold	\$480 (Under Medium threshold)	\$460	\$550	\$597.47	\$600
June 2020 (\$450)	\$401.93 Under Medium threshold	\$480	\$460	\$550	\$597.74	\$480
September 2020 (\$450)	\$456.25	\$480	\$460	\$550	\$477.97	\$480
December 2020 (\$430)	\$456.25	\$456.25	\$460	\$550	\$477.97	\$480
March 2021 (\$450)	\$477.97	\$456.25	\$460	\$450 (Under Medium threshold)	\$500	\$495
June 2021 (\$450)	\$477.97	\$456.25	\$470	\$450	\$500	\$495

				(Under Medium threshold)		
September 2021 (\$450)	\$477.97	\$488.84	\$470	\$450 (Under Medium threshold)	\$500	\$495
December 2021 (\$470)	\$477.97	\$488.84	\$470 Equal Under Medium threshold	\$450 (Under Medium threshold)	\$500	\$495

Table 2: Rental history received in the 5 year period prior to the lodgement of the application.

The information provided demonstrates that five (5) units were rented at less than the median at some point within the 5 years prior to the Development Application being lodged, resulting in five (5) low-rental dwellings at the property. Therefore, Part 3 Retention of existing affordable rental housing, pursuant to the ARH SEPP is applicable to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss pursuant to Section 51 of the ARH SEPP.

Clause 50 (2) of the ARH SEPP states:

- (2) *In determining a development application referred to in subclause (1), the consent authority is to take into account the guidelines and each of the following:*
- (a) *whether there is likely to be a reduction in affordable housing on the land to which the application relates,*
 - (b) *whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,*
 - (c) *whether the development is likely to cause adverse social and economic effects on the general community,*
 - (d) *whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,*
 - (e) *the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,*

Assessing Officer's Comment: The proposal seeks consent for alterations and additions to the existing residential flat building and to convert units 4 & 5 into 2-bedroom units and unit 6 into 3-bedroom. Based on the data submitted, it is concluded that there will be the reduction of four (4) low-rental dwellings. However, the application has argued that 2 of the 1-bedroom units had been affected by the Covid pandemic which resulted in the value of Units 1 & 3 to be reduced to support the tenancy during the pandemic hardship period.

The tenancy rental agreement noted that these units were only given a rental rate reduction during the pandemic period starting from June 2020, and it would be unreasonable to offset this payment onto the owner when it's evident that these units have only impacted during the pandemic period.

For the purposes of subclause (2)(b), sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.

The vacancy rate for the 3 months immediately before the date of lodgement (being December 2021, January 2022 and February 2022) are greater than 3% based on the data published by the Real Estate Institute of New South Wales as indicated below:

Vacancy Rate Survey Results February 2022:

Residential vacancy rate %

	Feb 2022	Jan 2022	Dec 2021	Nov 2021	Oct 2021	Sep 2021	Aug 2021	Jul 2021	Jun 2021	May 2021	Apr 2021	Mar 2021
SYDNEY												
Inner	2.8	3.4	3.7	4.4	3.9	3.7	2.9	3.1	4.0	3.3	4.0	4.5
Middle	2.4	2.9	2.9	2.9	3.1	3.9	4.0	3.9	3.2	4.6	5.8	5.8
Outer	1.5	1.5	1.8	1.8	1.8	2.2	1.7	2.3	2.2	2.5	3.2	2.5
Sydney Total	2.1	2.5	2.8	3.0	2.8	3.1	2.6	2.9	3.1	3.3	4.3	4.0
HUNTER												
Newcastle	1.9	1.8	2.1	2.0	1.8	1.5	2.2	4.0	1.6	1.6	1.7	0.7
Other	1.1	0.8	0.9	0.8	0.6	0.9	0.6	0.7	0.8	1.3	1.4	0.7
Hunter Total	1.2	1.0	1.2	1.0	0.9	1.0	1.0	1.6	1.0	1.4	1.5	0.7
ILLAWARRA												
Wollongong	0.4	0.4	0.8	0.7	1.0	2.0	1.5	1.4	1.4	1.2	0.9	1.6
Other	1.8	0.5	1.8	1.2	1.5	1.8	0.9	1.3	1.1	0.6	1.1	0.7
Illawarra Total	1.1	0.5	1.2	0.9	1.3	1.9	1.2	1.4	1.3	0.9	1.0	1.1

Table 3: Sydney vacancy rate from March 2021 to February 2022

Notwithstanding, the ARH SEPP guidelines state:

If the Sydney vacancy rate is equal to or exceeds 3% in the preceding quarter, then it is open to the applicant to demonstrate that adequate comparable accommodation is available in the locality.

The applicant has provided comparable accommodation from Domain.com based on the availability on the 25 January 2022 at the time of lodgement:

- 525 of the 1bedroom apartments were below the existing rental price + 5% (being \$525).

In view of the above, Council is satisfied that there is sufficient comparable accommodation available in the locality.

Subject to a condition to provide contributions for affordable housing, the development is not likely to cause adverse social and economic effects on the community.

In this instance, it is considered that Unit's 1 & 3 would not be classified as low rental dwellings and only Units 2 & 4 would result in a reduction of affordable housing on the land. Accordingly, contributions are applicable under the Housing SEPP 2021 which are calculation below as follows:

48 Contributions for affordable housing - the Act, s 7.32

A review was undertaken that determined the rental income received from these units was predominantly above the median rental price for a (1) one-bedroom units within the wider Randwick LGA.

(2) The amount of the contribution must be calculated in accordance with the following formula -

$$C = L \times R \times 0.05$$

where—

C is the contribution payable.

L is the total number of bedrooms in a low-rental dwelling and boarding rooms that will be lost by the proposed development.

R is the replacement cost calculated as the average value of the first quartile of sales of strata properties in the local government area in which the development is to take place, as specified in the 4 most recent editions of the *Rent and Sales Report*.

A total of two (2) bedrooms will be lost, therefore **L** = 2.

R is the replacement cost calculated as the average value of the first quartile of sales of strata properties in the local government area in which the development is to take place, as specified in the 4 most recent editions of the *Rent and Sales Report*.

The 4 most recent Quarterly Sales Statistics provided under the *Rent and Sales Report* are as follows:

The Four most recent Quartly Sales Statistics	
September 2021 - First Quartile	\$943,000
December 2021 - First Quartile	\$929,000
March 2022 – First Quartile	\$941,000
June 2022 – First Quartile	\$861,000
R = The sum of all four most recent Quartly Sales Statistics divided by 4, which equates to an average value of \$918,500	

C = Therefore: 2 (L is the total number of bedrooms in a low-rental dwelling) x \$918,500 x 0.05 = **\$91,850** contribution required.

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

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) came into effect in NSW on 25 August 2017.

The aims of the Vegetation SEPP are:

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

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

Clause 7(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). Consent for the removal of vegetation within the site is being sought under this DA.

Council's Landscape Officer has assessed the application and potential impacts upon existing trees. Council's Landscape Officer advised that there is only one significant tree towards the western site boundary which is of good health and condition that is protected by the DCP and is also part of a formal strategy in this street and area. Despite no significant external works being proposed on the site, protection measures and a bond have been imposed within any consent grant to avoid secondary damage caused by machinery, deliveries and similar.

A Concept Landscape Plan proposes to increase the amount of plant material and tree planting on the site which will both improve the amenity and appearance of the site as well as the quality of the communal open space for occupants which has been supported by Council Landscape Officer.

Subject to recommended conditions of consent regarding the retention of the street tree the proposal and landscape scheme is supported.

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.

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

The provisions of SEPP have been considered in the assessment of the application. The site and adjoining properties are currently used for residential purposes. There is no evidence to suggest

any potentially contaminating activities have taken place on or near the site. Accordingly, the site is considered suitable for the proposed ongoing residential use and satisfies the provisions of the SEPP.

6.5. Randwick Local Environmental Plan 2012 (LEP)

The subject site is zoned R2 Low Density Residential as identified on the Land Zoning Map of RLEP 2012. The existing building on the subject site is defined as a Residential Flat Building. Pursuant to the Land Use Table in Part 2 of RLEP 2012, a “residential flat building” is a prohibited use in the R2 zone.

The Applicant claims that the site benefits from existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979. Section 4.65 of Division 4.11 requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Furthermore, under Section 4.66, the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months.

The applicant has provided documentation of the original approval as a residential flat building approved in the 1940's in the SEE and a search of Council's records confirms that the residential flat building was approved under BA/223/1940. A search of Council's records also revealed that the use of the building for residential flat building is identified as existing on site as part of an application to construct three car garage at the rear of the site in 1959 under BA/204/1959.

The site is currently occupied by residents and used for its original purpose which was a lawful use at the time of its construction. There is no evidence to suggest that the approved use has been discontinued for any period of over 12 months since its commencement.

In view of the above, it is considered that existing use rights pertain to the site under Part 4, Division 4.11 of the EP&A Act and Part 7 of the EP&A Regulation 2021, and the subject application therefore may be considered and determined under the “existing use” provisions. See detailed assessment of existing use rights under Section 9.1 Discussion of key issues below.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the continued use of the site as a residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties. The proposed development will be improving the amenity on the site and visual quality of the existing building as view from neighbouring properties and streetscape. The proposed development will support the growing needs of the local community, apartment livability and style that support diverse and transitional lifestyle needs.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Clause 4.4: Floor space ratio (max)	0.5:1 (or GFA of 233.9m ²)	1.01:1 (or GFA of 475.72m ²)	No. Refer to Clause 4.6 – Exceptions to development standards.
Clause 4.3: Building height (max)	9.5m	Maximum of 9.865m from the natural ground level to the top of the ridge at RL 46.37	No. Refer to Clause 4.6 – Exceptions to development standards.

6.5.1. Existing use rights

Existing use is defined as “the use of a building, work or land for a lawful purpose immediately before coming into force of an environmental planning instrument which would, but for Division 4 Part 4 of the Environmental Planning and Assessment Act 1979 (EPA Act) have the effect of prohibiting that use”.

The concept of existing use rights allows for the use of land that was originally lawful but subsequently became unlawful by a change in a local environment plan, or another planning instrument, after the use had begun.

The existing use rights provisions relate to the primary land use of the development as a Residential Flat Building which is prohibited in the R2 zone. The existing building relies on existing use rights to maintain its use as an RFB, which is consistent with the relevant existing use rights provisions. The Clause 4.6 relation to Height of Building and FSR development Standards are to be read in conjunction with the detailed assessment made under existing use rights provisions under section 9.1 Discussion of key issues within this report.

6.5.2. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standards 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)	0.5:1 (or GFA of 233.9m ²)	1.01:1 (or GFA of 475.72m ²) Note: Existing FSR on the site = 0.664:1 (or 310.79m ²)	241.82m ² Note: Existing variation = 76.89m ²	50.83% Note: Existing variation = 32.87%
Cl 4.3: Building height (max)	9.5m	9.865m	0.365m	3.84%

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

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

- for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the two (2) storey with attic level presentation to Boundary Street will be consistent and compatible in size and scale with the character of the locality of other existing use right development in the immediate streetscape which are 3 storey (RFB) in height. The proposed upper-level setbacks are adequate to create a recessive upper roof element and is suitably disguised to ensure the building predominantly reads as a 2 storey building.

The proposal complies with the site coverage control and objectives in the DCP. The proposal will result in compliant and improved landscaped area and deep soil area, allowing for stormwater infiltration and soft landscaping which will improve the visual presentation of the building as viewed from neighbouring properties and public domain.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal provides large open-plan areas to provide opportunity for cross-

ventilation, and the internal amenity upgrading of the premises shall improve the standard of the residential accommodation.

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

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

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

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

- Visual bulk: The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed alterations and attic level shall not adversely impact the streetscape of Boundary Street, Winchester Street and Winchester Lane with regards to visual bulk and shall contribute to a more cohesive streetscape. It is also not anticipated that there will be any unreasonable adverse visual amenity impacts to the neighbouring development as the proposal has a similar scale, bulk and height to that of adjoining buildings.
- Loss of privacy: A detailed assessment of privacy impacts is provided below under Section 9.1 Discussion of key issues which demonstrates that the proposed development will not result in any unreasonable adverse privacy impacts as the west facing windows are of obscure glazing to sill height of 1.6m from the finished level. The remaining window openings and balconies face the street and do not cause any privacy impacts.
- Overshadowing: A detailed assessment of the overshadowing impacts is provided in below under Section 9.1 Discussion of key issues. This assessment shows that five (5) of the six (6) apartments will receive at least 3 hours of unobstructed solar access to private open space courtyards and balconies on 21 June. The neighbouring properties main living room windows and courtyards to the west will not be impacted by the proposed development and will continue to receive at least 2 hours of solar access in the morning.
- Views: There are no view loss impacts identified on the site.

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

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

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

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

The existing residential flat building comprises of alterations and additions and presents as a two storey built form with a recessed upper floor attic level. The attic addition is also contained behind the established front, side and rear setbacks and the bulk, scale and built form is consistent with other neighbouring residential flat buildings within the immediate streetscape.

The existing RFB which are 3 and four storeys in height directly to the west of the subject site and scattered along Boundary Street breach the current FSR control requirement of 0.5:1. The

proposed development will be generally consistent with the FSR and built form of these buildings.

The variation does not create excessive bulk or scale given the upper roof element is recessive and subservient to the level below. The site benefits from the physical separation afforded by the width of the two street frontages and the addition sits well along the two frontages and does not present any unreasonable impacts in terms of bulk or scale.

Assessing officer's comment:

The variation to the FSR standard can be attributed to the land use of the development, being a medium density development within a R2 low density zone, and the existing use rights pertaining to the site.

The FSR proposed represents a technical non-compliance whereby the proposal sits well within this section of the block and presents a compatible built form, scale and bulk to other existing development in the area, and to the desired building scale as intended by Clause 4.4 FSR control objectives.

The proposed development presents an exceptional opportunity to significantly enhance the public domain as viewed from both streetscape which currently present poorly with no landscaping to provide visual relief.

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

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

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

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of the R2 zone

The objectives of R2 zone are:

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

Assessing officer's comment: The proposed development including FSR variation, is consistent with the objectives of the R2 zone in that the proposal will provide improved amenity for the occupants of the site which provides for the housing needs of the community within a low-density residential environment. The proposal provides low-density and low-impact residential development that is consistent with the built form, scale and height with other development in the immediate area. The proposal sits well within the streetscape character and does not result in any unreasonable adverse amenity impacts (in terms visual bulk, loss of privacy, overshadowing and views) to the neighbouring properties and streetscape as discussed in the relevant sections of this report.

The addition at the rear on the ground and first floor level is consistent in design and character with the existing building form and will look like a uniformed structure as viewed from the streetscape. The proposed development complies with the site coverage and deep soil planting controls and objectives in the DCP. The proposal improves the overall landscaped area and vegetated character of the site as viewed from the streetscape and neighbouring development improving the overall presentation of the building.

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

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

Exception to the Building Height development standard (Clause 4.3)

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

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

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

The objectives of the Building Height standard are set out in Clause 4.3 (1) of RLEP 2012.

The applicant has addressed each of the objectives as follows:

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

The surrounding area comprises of a mixture of housing types which include three and four storey residential flat buildings and single and two storey semi-detached and detached dwelling houses. It is characterised by a diverse range of housing periodic styles which include dwellings, post-war, 1960's and 70's walk-up style apartments and more contemporary dwelling houses.

The proposed height variation is suitable for the subject site and within the context of the locality in that the variation is minor and does not result in any significant visual bulk and scale as

viewed from the streetscape and neighbouring properties. The variation is localised to the top of the ridge (maximum variation 365mm) and the main bulk of the roof form complies with the building height control. Refer to Figures 3 & 4 below which indicates the variation.

Importantly, the proposed height variation will not be responsible for any unreasonable adverse amenity impacts to neighbouring properties with regards to overshadowing, visual and privacy impacts nor will it impact on the streetscape.

The proposed height, bulk and scale of the proposed dwelling is compatible with the scale and design of other similar RFB within the immediate locality as shown in figure 5 below which indicates the proposed building height will generally aligns with the neighbouring residential flat buildings to the west at No.'s 25 & 23 Boundary Street. The design and articulated roof form on the upmost level is recessed from the main built form which ensure that the proposed building will sit comfortably within the streetscape along Boundary Street and Winchester Street.

Compliant street setbacks ensure that the built form will positively contribute to the physical definition of the street network and public spaces while reinforcing the street frontages. Therefore, the proposed building height will continue to reinforce the area's existing and future neighbourhood character.

On this basis, the height variation does not generate any inconsistency with this objective.

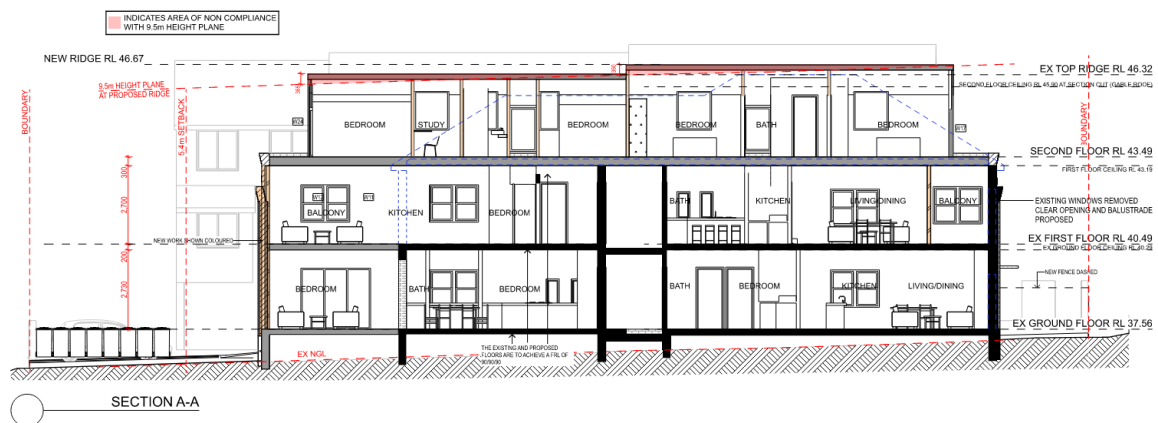


Figure 3: Indicating areas of non-compliance (max. variation of 365mm)



Figure 4: Building height plane showing non-compliant roof areas

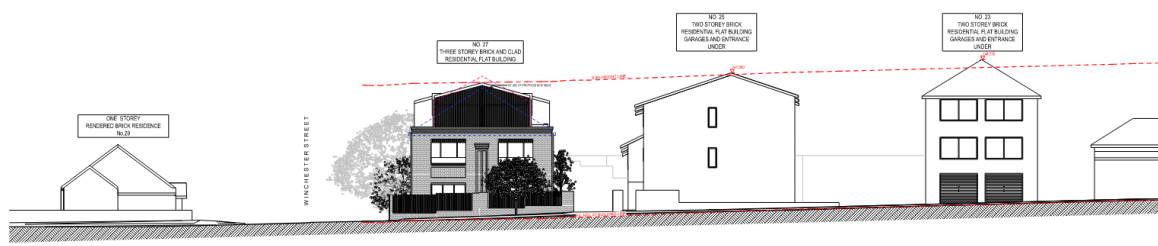


Figure 5: Streetscape view of subject and neighbouring properties

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

The subject site does not adjoin any heritage item, conservation area or special character areas.

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

- Visual bulk: The applicant’s written justification demonstrates that this objective is satisfied by noting that the proposed alterations and attic level shall not adversely impact the streetscape of Boundary Street, Winchester Street and Winchester Lane with regards to visual bulk and shall contribute to a more cohesive streetscape. It is also not anticipated that there will be any unreasonable adverse visual amenity impacts to the neighbouring development as the proposal has a similar scale, bulk and height to that of adjoining buildings. No significant or public views are affected by the proposed height variation as it is localised to the top of the roof.
- Loss of privacy: A detailed assessment of privacy impacts is provided below under Section 9.1 Discussion of key issues which demonstrates that the proposed development will not result in any unreasonable adverse privacy impacts as the west facing windows are of obscure glazing to sill height of 1.6m from the finished level. The remaining window openings and balconies face the street and do not cause any privacy impacts.
- Overshadowing: A detailed assessment of the overshadowing impacts is provided in below under Section 9.1 Discussion of key issues. This assessment shows that five (5) of the six (6) apartments will receive at least 3 hours of unobstructed solar access to private open space courtyards and balconies on 21 June. The neighbouring properties main living room windows and courtyards to the west will not be impacted by the proposed development and will continue to receive at least 2 hours of solar access in the morning.
- Views: There are no view loss impacts identified on the site.

Therefore, it can be stated that the proposed height variation associated with the built form will result in minimal amenity impacts to the surrounding developments.

On this basis, the height variation does not generate any inconsistency with this objective.

Assessing officer’s comment:

The maximum building height is 9.865m with RL of 46.37m resulting in a 365mm variation based on site level (existing) of RL 36.50m which is the site level existing is a perpendicular point below floor of existing building. The variation is localised to the top of the ridge and the main build form and attic roof structure complies with the building height control standard.

The size and scale of the proposed development is consistent with other residential developments in the immediate vicinity of the site with particular regards to No. 25 & 23 Boundary Street which are also non-conforming residential flat building uses.

The proposed built form responds to the topography of the site by cooperating a recessed architectural element into the design of the attic level which will ensure the bulk and scale is adequately distributed to minimise visual amenity impacts to neighbouring properties and streetscape. In this regard, there are no view loss impacts associated with the proposed height variation.

The proposed development is therefore compatible with the desired future character of the locality. In addition, the proposed development will not result in any significant adverse amenity impacts to the adjoining residential properties in terms of overshadowing, visual bulk, privacy or view loss (refer to Section 9.1 Discussions of key issues section of this report).

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

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

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

- The height variation allows for compliant floor-to-ceiling heights on ground and first floor levels and will ensure adequate internal amenity is achieved to the attic level.
- The height variation will not obstruct any significant views and aligns with other older RFB in the vicinity. The proposed built form as an attic style is considered suitable for the site in that it is recessed within the main built form, does not read as a full additional level and consistent with the zoning's bulk and scale of development along this section of the street. Notably, the height, mass, bulk and scale proposed are compatible with adjoining development at No.'s 25 & 23 Boundary Street.
- The provision of a pitched roof results in a variation to the height control. The breach is very minor (365mm) and only relates to the uppermost section of the pitched roof. The main bulk of the roof is compliant with the 9.5m control height limit. A pitched roof better responds to the local character than a flat roof form and the 17-degree pitched roof maintains a level of consistency with the existing built form character.
- The height variation does not significantly impact the amenity of neighbouring properties in relation overshadowing, solar access, views, visual amenity or privacy impacts.

Assessing officer's comment:

The applicant's environmental planning grounds provided to justify contravention of the development standard relate to the site and its context and the paucity of environmental impacts to the adjoining properties. The non-compliance is confined to a portion of the roof form to the top of the roof ridge of the building. The height variation has been well integrated into the articulated design aesthetic of the built form and positively contributes to locality, particularly when viewed from the public domain.

The non-complying building roof elements will not result in any adverse amenity impacts to the adjoining residential properties or any undue visual impacts when viewed from the streetscape. The proposal is sensitively designed to mitigate amenity impacts to the surrounding neighbouring properties by reasonably preserving solar access, views and privacy.

The applicant's environmental planning grounds are therefore supported.

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

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

Assessment against objectives of building height standard

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

Assessment against objectives of the R2 zone

The objectives of R2 zone are:

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

Assessing officer's comment: The proposed development provides housing in a low-density residential environment that will improve the amenity of the existing units on the site, is compatible with the desired future character of the locality which results in low density impacts and built form that protects the amenity of adjoining residents. The proposed development is therefore consistent with the objectives of the Building Height standard and the R2 zone and will be in the public interest.

8. 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?

The proposed development will achieve a suitable urban design outcome and is therefore of public benefit.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>Randwick Local Environmental Plan 2012 (LEP)</p> <p>While the RFB use is prohibited within the R2 zone, the proposal is still considered to be consistent with the general aims of RLEP 2012 and the specific objectives of the R2 zone in that the proposed activity and built form shall not compromise the aesthetic character of the streetscape, or the environmental qualities and social amenity of the locality. Furthermore, the impacts of the proposal upon the amenity of neighbouring land are not considered to be unreasonable.</p> <p>The existing use rights provisions relate to the primary land use of the development as a Residential Flat Building which is prohibited in the R2 zone. The existing building relies on existing use rights to maintain its use as an RFB, which is consistent with the relevant existing use rights provisions. See detailed assessment of existing use rights under Section 9.1 Discussion of key issues below.</p> <p>See discussion in sections 6 & 7 and Section 9.1 Discussion of key issues below.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	<p>The Draft Comprehensive Planning Proposal to update the Randwick Local Environmental Plan (RLEP) 2012 was publicly exhibited from the 31 May to the 12 July 2022.</p> <p>The proposed development would not be inconsistent with the provisions of the draft RLEP 2012.</p>
Section 4.15(1)(a)(iii) – Provisions of any development control plan	<p>The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013.</p> <p>See table in Appendix 4 and the discussion in key issues below.</p> <p>The proposal does not rely upon the provisions of the draft LEP or the DCP interim policy. Notwithstanding this, the proposed development would not be inconsistent with the draft DCP interim policy.</p>
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 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Existing Use Rights

Section 4.65 of Division 4.11 of the *Environmental Planning and Assessment Act 1979* requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Based on the documentation provided by the applicant, the original approval for the existing building is considered to have been constructed in the 1940s, with a RFB having been on the site for an extended period of time. A search of Council's records revealed that the use of the building for residential flat building is identified as existing on site as part of an application to construct three car garage at the rear of the site in 1959 under BA/204/1959.

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the "incorporated provisions" of the Act would have no force or effect. It should be noted that derogation from the incorporated provisions has also been considered in recent caselaw with regards to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 in which it was determined that the provisions of a LEP do not necessarily derogate from the incorporated provisions of the EP&A Regs and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of a LEP. In this instance (and adopting the Commissioner's findings in the above LEC matters), it is considered that the provisions of clause 4.4 read in conjunction with clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions, and that an assessment of the development in accordance with s4.15 of the EP&A Act should be undertaken.

Furthermore, as the provisions of clauses 4.3 & 4.4 are applicable, and the Applicant seeks to vary the Height of Building and FSR, clause 4.6 request are required. The Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council*, 2005) which establishes criteria for the assessment of proposals on land with existing use rights. As such, the proposal has been assessed against the relevant provisions of RLEP 2012 and RDCP 2013 as well as the planning principal.

Assessment against the planning principal is provided below:

Planning Principal 1***How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?***

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.

The subject site is located within the R2 – Low Density Residential zoning, with the adjoining and adjacent properties within the surrounding area primarily low-density developments in the form of dwelling houses and semi-detached dwellings. However, immediately to the west of the site there are two residential flat buildings (23 & 25 Boundary Street) which are also non-conforming uses and are three storeys in height with the ground floor level being garages. The existing RFBs within the street vary in height from three (3) to four (4) storeys.

The maximum building height is 9.865m with RL of 46.37 resulting in a 365mm variation based on site level (existing) of RL 36.50 which is the site level existing is a perpendicular point below floor of existing building.

The existing FSR of the building exceeds the permitted FSR on the site 0.5:1 (or 233.9m²) being 0.664:1 (or 310.79m²). The proposed works is increasing the FSR on site by 164.93m² which results in an FSR of 1.01:1 (or 475.72m²).

The additional floor area is proposed to the rear of the existing building and within the proposed attic level. It is not considered that the proposed bulk and scale of the development will result in any unreasonable adverse visual amenity impacts. The existing built form was deemed to be compatible with the surrounding bulk and scale, with the building being two (2) storeys with a recessed attic level. The proposed development will comply with the site coverage on the site. The landscaping proposed on the site will be improved the visual amenity for the occupants of the site and will improve the presentation of the building as viewed from the streetscape.

The rear extension will be consistent with the rear setback and built form of other similar and adjoining development and is a continues built form that will reinforce and address the street frontage along Winchester Street.

While it is acknowledged that the proposed development would significantly exceed the FSR and breaches the height provisions of the R2 – Low Density zone, given the context of the existing area, the bulk and scale of the proposal is not considered to be incompatible with the existing streetscape and character of the local area within the immediate vicinity providing a low scale residential development that will cater for the housing needs for the occupants of the apartments.

In view of the above, the bulk and scale of the proposed development is supportable when considered in the context of the site and surrounds.

Planning Principal 2***What is the relevance of the building in which the existing use takes place?***

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.

The proposed development does not involve a change of use to the existing development. The proposed development seeks to improve the amenity of the existing units on the site by providing additional bedrooms to Units 4, 5 & 6, larger functional living space and new functional communal area for the occupants of the site.

As discussed above, the additional bulk and scale of the development will be consistent with the bulk and scale of other similar development in the immediate vicinity which are also non-conforming uses and are three and four storeys in height.

Planning Principal 3

What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Submissions have been received raising concerns with regards to the privacy, overshadowing, visual bulk and parking impacts on the adjoining properties.

Visual amenity impacts

The form, scale, massing and proportion of the proposed development is consistent with other residential developments in the immediate vicinity of the site with particular regards to No. 25 & 23 Boundary Street which are also non-conforming residential flat building uses.

The proposed built form responds to the topography of the site by incorporating a recessed architectural element into the design of the attic level which will ensure the bulk and scale is adequately distributed to minimise visual amenity impacts to neighbouring properties and streetscape.

Overall, the facades of the development will not be bulky as they are well articulated with distinct components, variations in setbacks, prominent windows, and a variety of materials including face brick and lightweight cladded roof addition above. The primary material is brick which is consistent with the traditional brick flat buildings which characterise the area with a recessive contemporary design above to mitigate impacts of additional bulk and create visual interest to the building.

Visual Privacy

Concerns were raised by the adjoining neighbour to the west at 25 Boundary Street in relation to visual privacy impacts from the windows along the eastern side elevation and requested privacy measures to be implemented to mitigate potential privacy impacts.

Council raised concerns in relation to the deck and new window openings along the western elevation and as a result amended plans were received addressing these concerns. The new window openings to the western elevation are of obscure glazing to sill height of 1.6m which mitigates privacy impacts to the neighbouring RFB at No. 25 Boundary Street.

Existing west facing window openings W24 & W25 on the first floor level which were previously used as a bathroom in Unit 5 has now been configured to be used as a kitchen. Given that kitchen is likely to be used more frequently and there are neighbouring window openings that are directly adjacent, it is recommended that privacy measures be implemented to these window openings.

The remaining new window and door openings to the northern, eastern and southern elevations will overlook either the front or rear yards of the subject site or streetscape.

The deck area off the living room of Unit 3 to the western elevation is elevated from the ground floor. A privacy screen is provided to the western side of the deck to minimise privacy impacts to the neighbouring RFB at No. 25 Boundary Street.

The existing and proposed balconies to the northern and eastern elevations face street frontages and will primarily overlook the streetscape.

The proposed development also complies with the objectives of the DCP control for visual and acoustic privacy.

Solar Access

The proposed alterations and additions will improve solar access to the internal living areas and newly proposed private open spaces.

Five of the six units (83.3%) will receive a minimum of 3 hours of solar access on 21 June to balconies/courtyards and internal living rooms which are predominantly north facing and complies with the solar access requirements under the ADG and Randwick DCP 2013.

Only Unit 3, the internal living rooms and POS which are south and west facing receives less than 2 hours of solar access on 21 June. The POS will receive solar access for approx. an hour and half (to parts of the courtyard area) from 11:30am to 1pm and the living room windows will receive approx. an hour of solar access around 12:30pm to 1:30pm. Refer to Figure 6 Sun Path Diagrams below. This level of solar access is acceptable when considering the orientation of the site and solar access to the living room of this unit will be improved from its current situation.

The communal open space is located to south (rear) of the building and due to the orientation of the site currently receives limited solar access. The proposed development will still allow parts of the communal open space throughout the day to receive some level solar access to the surface of the communal open space on 21 June. Refer to Figure 7 shadow diagrams below. This level of solar access is considered acceptable when considering the main built form complies with the rear and side setback controls and the non-compliant dormer window elements do not contribute to any unreasonable overshadowing impacts to the neighbouring properties.

The main living areas & POS to the neighbouring property at No. 25 Boundary Street are west facing and are not impacted by the proposed development. The east facing windows on the first floor are to Kitchen and laundry windows and on the second floor level are to bedrooms and studies. The sun path diagrams demonstrate that first floor windows will only receive approximately 1 to 1 and half hours of solar access on 21 June while the second floor level windows will receive a minimum of 2 hours of solar access.

Given the main living areas to this building are on the first floor level which are west facing and will receive a minimum of 2 hours of solar access in the morning as there is adequate building separation between the properties at no. 23 & 25 Boundary Street, the level of solar access received to the east facing kitchen windows on the first floor level would be acceptable. In addition to the above, there is adequate separation between the subject site and adjoining property to allow for sufficient daylight to be received to these windows.



8AM VIEW FROM SUN



9AM VIEW FROM SUN



10AM VIEW FROM SUN



11AM VIEW FROM SUN



12PM VIEW FROM SUN



1PM VIEW FROM SUN

D36/23



Figure 6: 3D Sun Path Diagrams

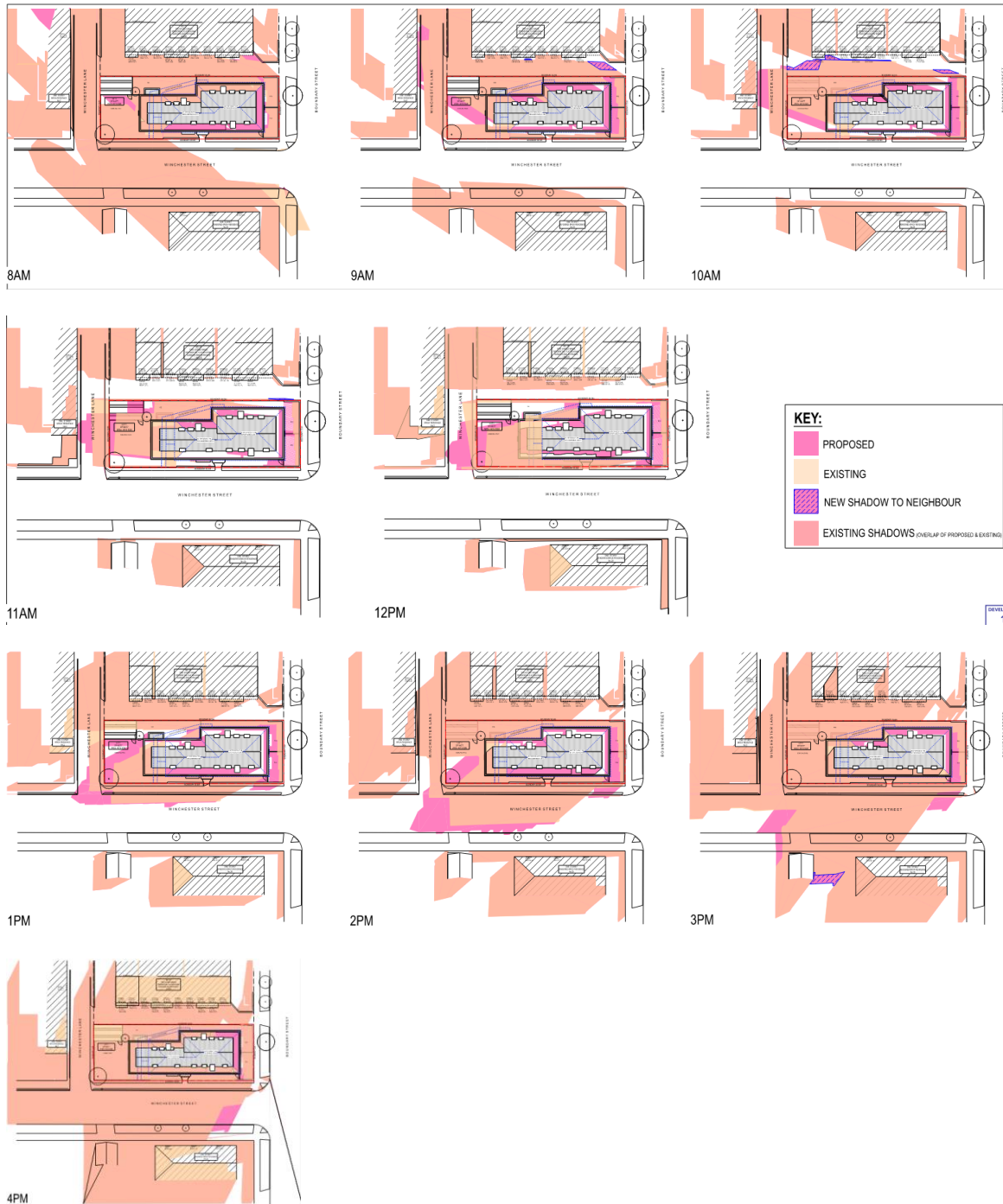


Figure 7: Proposed Shadow Diagrams on 21 June

View Loss

There are view loss impacts identified on the site.

Parking

Refer to Appendix 1 Internal referral comments section under Development Engineers which notes that the additional carspace provided off Winchester Lane will cater for the additional parking demand for the site and given the availability of on-street parking it is not expected that the proposed development will result in any unreasonable parking impacts on the external road network. The development is supported on traffic planning grounds.

Planning Principal 4

What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

The internal amenity of the units has been significantly improved as a result of the additional GFA and height with larger open plan living areas to provide opportunity for cross-ventilation and solar access. The internal amenity upgrading of the premises and larger bedroom and living areas will allow for better functional spaces and will improve the standard of the residential accommodation and living to the apartments.

The proposal will be improving the landscape setting around the perimeter of the site and front streetscape and facilitating additional recreational uses for the existing apartments. Dedicated private open space is provided to all the units which will significantly improve the current amenity on the site.

Based on the above existing use rights assessment, the proposed does not result in any significant or unreasonable adverse amenity impacts on the adjoining properties or the locality and would not detract from the aesthetic or environmental qualities of the surrounding area and the wider locality.

The proposed works will support the efficient use of land by utilising the existing and proposed built form structure on the subject site to increase housing opportunity for the locality which will continue to integrate with and support the primary residential low scale function of the zone.

Clause 4.4 -Floor Space Ratio

The proposed development seeks to undertake alterations and additions to the existing development to improve the amenity and functionality of the dwellings while providing additional bedrooms and improved facilities to the meet the needs of the occupants. Due to the size of the site, being 467.8m², and the residential nature of the development comprising 6 existing dwellings, the proposal results in a variation to the FSR development standard. The proposed development shall have a Floor Space Ratio of 1.01:1 or a GFA of 233.9m².

The Floor Space Ratio Map pursuant to clause 4.4(2) identifies that the proposed maximum FSR for the development is 0.5:1 for RFB and the proposed development is numerically non-compliant with the development standard. As such, quantitatively, the Applicant seeks to vary the development standard by approximately 50.83% and a Clause 4.6 exception to vary the development standard is required. See assessment of Clause 4.6 in relation to the contravention of the maximum FSR under Section 7 of the report.

Randwick Comprehensive DCP 2013

Part C2: Medium Density Residential

Section 3.3 - Building depth

Objectives

- *To facilitate the provision of dwelling units with more than one aspect in order to improve natural lighting and ventilation.*
- *To ensure reasonable amenity for occupants of dwellings in terms of solar access and natural ventilation.*

Controls

- i) *For residential flat buildings, the preferred maximum building depth from (window line to window line) is between 10m and 14m. The building depth is to be determined by the following factors:*

- *Site configuration*
- *Site orientation and aspect*
- *Prevailing wind patterns*
- *Building layout*
- *Internal room configuration*
- *Window size, configuration and operation*

Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings/units.

The proposed wall depth is as follows:

- Ground & First Floor level 25.26m (east)
- Second Floor addition 16.88m (east)
- Max. wall length on Ground & First Floor level is 13.78m (west)
- Maximum wall length on the second floor level is 6.82m, (west). Dormer windows are proposed to break up the wall.

The site is a corner lot with a northerly orientation. The existing building and units are well orientated to primarily overlook 3 street frontages which allows for good solar access and ventilation. The proposed internal layouts and open spaces have been designed with a larger open plan living area in order to receive increased solar access and natural ventilation.

The non compliant wall depth section is along the eastern elevation. In this instance it is acceptable as the additions to the rear and the second floor level will reinforce the street frontage and will provide a strong distinct built form character along the street edge.

Given the above reasons, the above control objectives have been satisfied.

Section 4.4 - External wall height and ceiling height**Wall Height**

RDCP Part C2 3.2 ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.

The proposed development has a maximum external wall height of approx. 9.12m from the natural ground line which does not comply with the maximum 8m control. The wall height is considered acceptable for the following reasons:

- The existing two storey main built form element is under the wall height control limit. As shown in figure 8 & 9 below the recessed attic level addition to the eastern & western

elevations of the building exceeds the 8m wall height control. Notwithstanding this, the development incorporates a pitched roof with lower wall height and the side walls are setback from the main building footprint, which also aids in reducing the visual bulk of the non compliant external wall sections.

- The proposed building height and external wall height is compatible with the scale and height of other similar residential flat buildings within the immediate area and will not detract from the established attributes of the low scale residential development in the immediate locality.
- The proposed materials and finishes will be consistent with existing building and adjoining similar development within the locality. The visual impact of the wall height is offset with increased upper-level setbacks which will result in a lightweight upper building element clearly distinguished from the main built form. The proposal will be improving the visual aesthetics of the building and as discussed in the relevant section of this report, the non-compliance with the external wall height control will not result in any unreasonable additional overshadowing, privacy or adverse visual amenity impacts to the adjoining properties or streetscape.

Given the above reasons, the above control objectives have been satisfied.

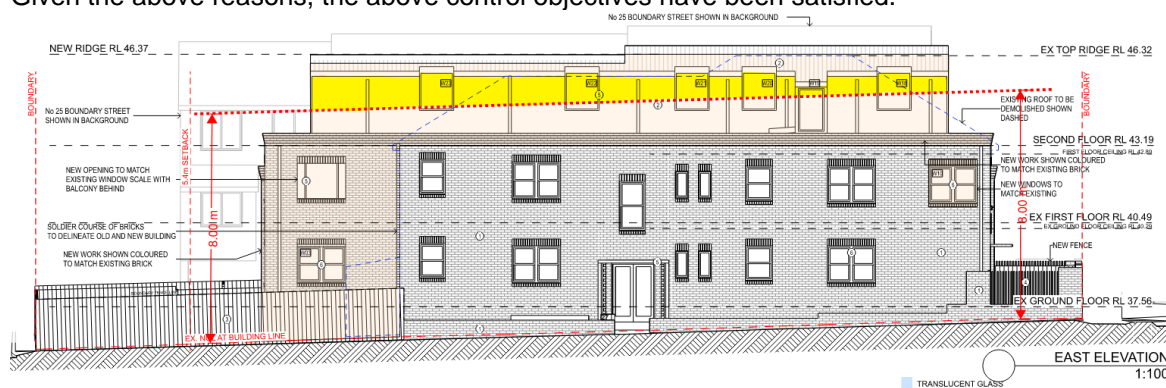


Figure 8: Eastern Elevation showing highlighted area of non compliant external wall height

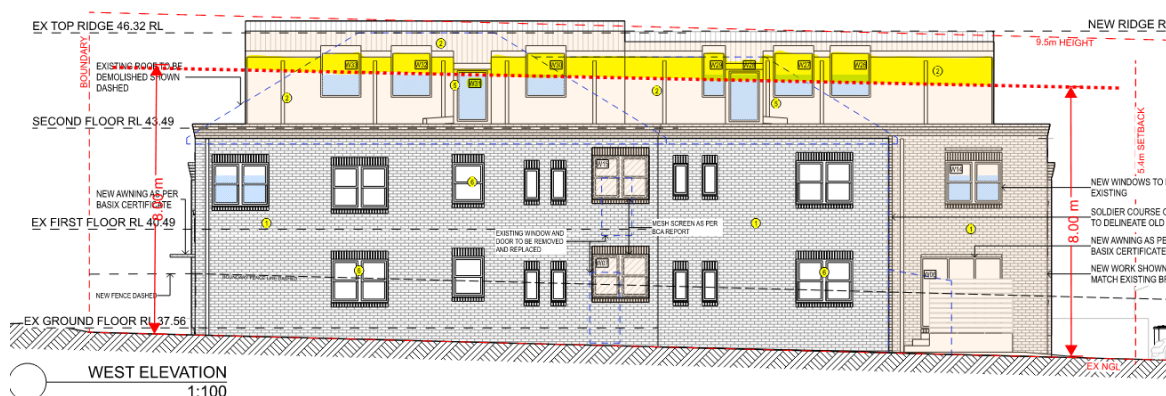


Figure 9: Western Elevation showing highlighted area of non compliant external wall height

Ceiling height

The ground floor Units 1, 2 & 3 maintain a floor to ceiling height of 2.7m for all habitable rooms.

Units 4, 5 & 6 on the first floor level maintain a floor to ceiling height of 2.7m to the living areas; however, on the second floor attic level the bedrooms and bathrooms have ceiling height which vary from 2.2m and rake up to 3m. Two thirds of the bedrooms have minimum sill heights of 2.4m. The ceiling heights to these units will comply with the minimum requirements outlined in the

National Construction Code (NCC) of Australia Volume 1 Part F3.1(a)(iv)(A) for habitable rooms in attics.

The proposed ceiling heights are acceptable for an attic roof and will provide reasonable levels of safety, health, solar access, ventilation and amenity for the occupants of the property which meets the objectives of the control. Refer to Figures 10 below which shows the cross section of the head clearance within the attic level.

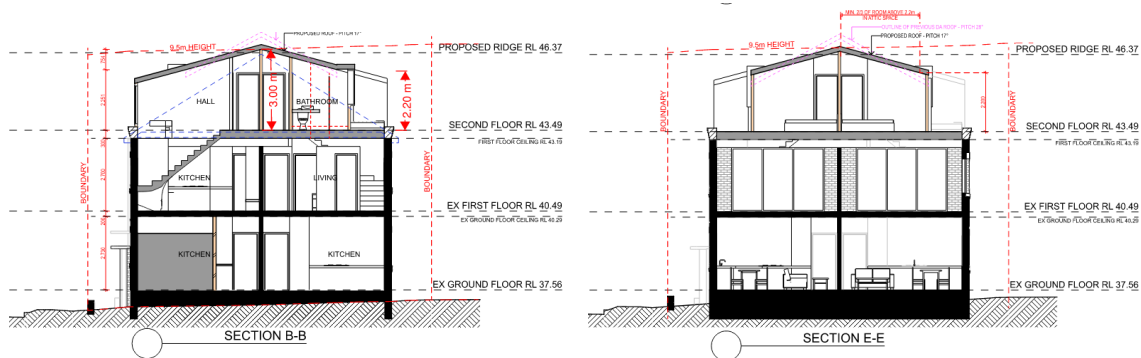


Figure 10: Cross sections showing ceiling height & minimum height clearance

10. Conclusion

That the application is seeking approval for alterations and additions to the existing two storey residential flat building including a new loft style third floor level and extension to the rear of the building be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The Variations to the Building Height and FSR control standards have been supported as the non compliant components of the development will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.
- The site is subject to existing use rights and the assessment concludes that the proposed development is consistent with the specific objectives of the R2 zone in that proposed activity and built form will provide for the continued use of the site as a low scale residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.

Non-Standard Conditions

• Privacy measures

To ensure privacy measures are maintained one of the following privacy measures shall be provided to the existing west facing window openings W24 & W25 on the first floor level to the new kitchen area in Unit 5:

- The window openings shall have a minimum sill height of 1.6m above finished floor level; or
- The window openings shall be fixed and be provided with translucent, obscured, frosted or sandblasted glazing to a minimum sill height of 1.6m above finished floor level;

- External privacy louvers shall be installed and fixed at an angle to prevent overlooking into the neighbouring properties.
- **Loss of Affordable Rental Housing Contribution**
A contribution of \$91,850 for mitigating the loss of low-rental accommodation pursuant to Clause 48 of the Housing SEPP (2021) shall be paid to Council in one complete payment prior to the commencement of any works, including the demolition works. The contribution must be paid in cash, bank cheque or by credit card.
- **Sustainability measures**
To improve sustainability measures and comply with the ADG requirement the following is to be included in the design:
 - Ceiling fans in all bedrooms and main living spaces
 - Solar Photovoltaic Cells
 - insect screens on all opening windows and doors

Appendix 1: Referrals

1. Internal referral comments:

1.1. Randwick Design Excellence Advisory Panel

INTRODUCTION

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

The Panel's comments are intended to assist Council in their design consideration of an application against the SEPP 65 or/and Design Excellence principles. The absence of a comment under a head of consideration does not imply that particular matter to be satisfactorily addressed, more likely the changes are suggested elsewhere to generate a desirable change.

Your attention is drawn to the following:

- SEPP 65, including the 9 Design Quality Principles and the requirements for a Qualified Designer (a 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.

Both documents are available from the NSW Department of Planning.

Note:

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

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

PANEL COMMENTS

DA INFORMATION

Additions and alterations to existing residential flat building including an additional level replacing the existing roof.

The proposal seeks to reconfigure the internal areas of the existing two storey building containing six (6) units and add a third storey containing two bedrooms for each apartment below (units 4, 5 and 6). The proposal includes one off-street car space.

Existing Use Rights – The site is zoned Residential R2 under RLEP 2012 which prohibits residential flat buildings. Permissible under the 'existing use rights' provisions pursuant to Part 4, Division 4.11 of the EP&A Act 1979, as amended and Part 5 of the Environmental Planning and Assessment Regulation 2000.

LEP DCP Control TABLE – Used As a Guide As Controls do not apply to Existing Use Rights			
LEP DESCRIPTION	COUNCIL STANDARD	PROPOSED	COMPLIANCE
Floor Space Ratio (Maximum)	0.5:1	Ground Floor = 200.82sqm First Floor = 163.95sqm - Second Floor = 110.95sqm Total = 475.72sqm / FSR = 1.01:1	Does not comply
Height of Building (Maximum)	9.5m	Building Height (Existing): 46.32 RL (9.62m) Building Height (Proposed): 47.13 RL (10.43m)	Does not comply
DCP DESCRIPTION	COUNCIL STANDARD	PROPOSED	COMPLIANCE
Waste and Bin Operations			
Parking	Parking Rates: 1 space per 1 bedroom unit 1.2 spaces per 2 bedroom unit 1.5 spaces per 3 or more 1 visitor space per 4 dwellings.	Currently no carparking space is provided for the existing 6 units. Provision of 1 off street parking space - shared car space	Does not comply
Landscape & Deep soil	minimum 30% requirement	The development site will provide 207.58sqm as deep soil landscape area to be provided in COS and POS areas, equivalent to 44%	Complies
Private/Communal Open Space		Communal open space is provided to the rear and is accessible by all the units	Complies
Building Depth			No change
Front Setback		No changes to the front setback. The upper level addition is recessed approximately 2m from the existing front facade.	No change
Rear Setback	No minimum rear setback control applies to corner allotments in the surrounding low-density area.		Complies
Side Setback			No change
External Wall Height	7m or 8m for sloping site	Approx. 8.75m from natural ground level	Does not comply
Ceiling Height	2.7m	Floor to ceiling height varies. 2.422m at the lowest point. Height increases at the centre and is greater than 2.7m. Lowest point is 2m and 2.058m.	Does not comply
Internal Circulation			
Apartment Layout			Improved
Balconies		Unit 6 has balcony orientated to the south west and overlook Winchester Street.	

Solar Access		5 of the 6 units will receive a minimum of 2 hours of direct solar access. There will be additional overshadowing impacts to the north facing windows at no. 2 Winchester Street	
		2 hours solar access to 50% of communal open space mid-winter	Does not comply

PANEL COMMENTS

The panel commends the dwellings' considered design. However, it has concerns about the non-compliant aspects of the scheme, namely, the proposed bulk beyond both the Boundary Street and Winchester Street façades, which affects the amenity of both the occupants and the adjacent residents.

1. Context and Neighbourhood Character

- the quality and amenity of the public domain

In principle the proposed development sits comfortably within the context of the surrounding two and three-storey brick and render buildings.

The dark, recessed, and pitched roof addition has an appropriate scale and form for this neighbourhood where pitched roofs and gable ends are predominant.

A three-storey form is appropriate on this corner site as long as the additions do not compromise its neighbours' amenity.

The shrouded upper-level windows facing east and west are too large and overwhelm the roof addition.

2. Built Form and Scale

The building is over the FSR and is over the wall height. Despite these non-compliances, the Panel's primary focus is on whether these matters can be supported; does the design achieve an appropriate and high-quality outcome?

The built form and scale of the building are compatible with the neighbouring three-storey building and others in the streetscape. The roof addition is recessed and not overbearing.

3. Density

The proposal amounts to an increase in density for this well-serviced area. However, the additional floor space results in sub-standard amenity impact on its neighbours at no. 25 Boundary Street. The privacy impact can be lessened; see discussion in 6. Amenity below.

4. Sustainability

The proposal does not appear to include any improvements for accessibility as described in the ADG and Livable Housing Guidelines. Any upgrade to the building should consist of improvements for disabled access.

The design and orientation of sun-shading should suit its orientation to allow solar access in winter and protection in summer.

The Panel would like to see some additional sustainability measures included in the design. The introduction of changes such as these will benefit the occupants in the short and long term:

- Ceiling fans in all bedrooms and if possible, living spaces
- Secure bike parking and storage
- PV Cells
- insect screens on all opening windows and doors

5. Landscape

The existing site is almost tree-less, and the landscape plan offers only one new tree amidst minimal additional landscaping. There is plentiful deep soil on the site due to the lack of car parking; the design should embrace the opportunity to provide improved landscaped screening and outlook for the occupants and neighbours. The additional landscape would improve the presentation to the street. Waste bin areas should be screened, ideally with landscaping.

A plan prepared by a landscape architect is recommended by the Panel.

6. Amenity

The proposal's additional height and bulk compromises amenity, particularly sky views and privacy of the neighbours, the applicant should review how it can be less impactful on the neighbouring bedrooms.

All west-facing windows should be removed or designed to avoid overlooking, e.g., translucent glazing up to, or sills raised, to 1400mm above the floor level, or fixed privacy screens that take into account adjacent window positions.

Privacy between dwellings should also be improved through landscaping.

7. Safety

No comment.

8. Housing Diversity and Social Interaction

Accessibility at the building, apartment entrances, and communal open space all require upgrading.

Consideration should be given to the introduction of a lift.

9. Aesthetics

Architectural Design, Materials and Detailing

The pitched roof form is an appropriate response in this context. The dark recessive nature of the roof addition is supported, the cladding should be detailed so that it is thermal energy efficient, e.g. using a ventilated cavity. The dominance of the top-level windows requires reduction.

The junction between new and old should be carefully detailed to avoid mismatched bricks colliding with the existing ones. Devices that could be used include a vertical shadow gap, stepped indentation (as found elsewhere on the existing façade) between new and old, or a change in brickwork laying pattern. In addition, the removal of exposed service pipes would improve the façade.

SUMMARY AND RECOMMENDATIONS

The Panel supports the increased floor space and consequent bulk in this corner location. The impacts of privacy on the neighbours need to be significantly reduced by more judicious window design. The landscaped area requires more planting with increased canopy for privacy, shading, and streetscape improvement. The design requires greater accessibility, especially to apartment entries.

1.2. Development Engineer

This report is based on the following plans and documentation:

- Architectural Plans by Alchemy Architecture, dwg's DA00-17, rev 12, dated 22/02/2022;
- Statement of Environmental Effects by Andrew Martin Planning dated Jan 2022;
- Detail & Level Survey by Geographic Solutions dated 21/06/2022;
- Waste Management Plan by Alchemy Architecture dated 10th Feb 2022;
- Traffic and Parking Assessment by Varga Traffic Planning dated 10th August 2021.

Parking Comments

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

FOR MULTI-DWELLING HOUSING AND RESIDENTIAL FLAT BUILDINGS:

- 1 space per 1 bedroom unit
- 1.2 spaces per 2 bedroom unit
- 1.5 spaces per 3 bedroom unit
- 1 visitor space per 4 units (but none where development is less than 4 dwellings)

Existing Situation

The site currently comprises of 6 x 1 bedroom units generating a parking demand of **7 spaces** (including 1 visitor space) when adopting the above parking rates. As there is no off-street parking currently provided on the site, this demand is currently being burdened by the surrounding street networks. The subject site's 3 street frontages on Boundary St, Winchester Road and Winchester Lane assist in restricting parking demand to the site frontages with minimal impact across neighbouring property's frontages..

Proposed Development

The proposal does not change the total number of units which shall remain at 6, but will result in a changed unit configuration comprising of 2 x 1 bedroom, 3 x 2 bedroom and 1 x 3 bedrooms units

Parking Required under DCP	= (2 x 1) + (3 x 1.2) + (1 x 1.5) + 1(visitor)
(Proposed Development)	= 2 + 3.6 + 1.5 + 1
	= 8.1
	= say 8 spaces

Parking Demand will therefore increase by 1 space from 7 to 8 spaces as a result of the proposed development.

Sec 3.2 Part B7 of Council's DCP 2013 states;

"Where Development comprises an extension, modification or change of use to an existing development, Council will generally only require that additional parking be provided to cater for the additional demands arising from increases in floor space or changes in use"

Development Engineering therefore requires that the proposed development provide a minimum of 1 space. It is noted this has been provided with a proposed carspace accessed from the Winchester Lane at the rear.

The availability of on-street parking is therefore not expected to be impacted as a result of this development.

Bicycle Parking

For Flats/multi dwelling bicycle parking to be provided at 1 space per 2 units plus 1 visitor space per 10 units. Although as no increase in unit numbers are proposed Development Engineering would encourage the provision of some bicycle parking given the significant existing shortfall of vehicle parking.

Flooding Comments

The applicant is advised that the subject development site is located adjacent to a localised flow path in Boundary Street and the now completed “Clovelly Flood Study” indicates flooding is predicted within the front setback of the property on Boundary Street during major storm events

The flooding is of a relatively minor nature with flood depths of less than 0.16m predicted generally within the front setback on Boundary Street for the 1% AEP (1 in 100yr) flood (see plot below).



In reality the current brick boundary fence (not modelled above) fronting Boundary & Winchester Streets would likely prevent most flood waters from entering the subject property with flows generally expected to be restricted to the road reserve.

Notwithstanding the flooding would not significantly affect the proposed development in any case as it is noted the rear ground floor addition component being at RL 37.56 is almost a metre above the adjacent ground level (being approx. 36.5). This easily complies with the DCP requirement of the floor level being required to be provided at twice the depth of flow when adjacent to an overland flow path. As the proposed floor is over 5 times above the depth of flow in this case, there are no objections from a flooding perspective.

Drainage Comments

The proposed development will result in an additional 34m² being added to the existing building footprint being an increase of 29m² in impervious area (since there was an existing footpath of 5m² there previously). The removal of some additional existing concrete paths will also result in an additional 10m² of impervious area being removed. The resulting net increase in impervious area being approximately 19m² is therefore considered negligible and does not trigger the need for any on-site detention.

Stormwater runoff from the (redeveloped portion) site shall therefore be discharged either:

- To the kerb and gutter along the site frontage by gravity (without the use of a charged system); OR
- To a suitably sized infiltration area.

Undergrounding of power lines to site

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

- Should a mains power distribution pole be located on the same side of the street and within 15m of the development site, the applicant must meet the full cost for Ausgrid to relocate*

the existing overhead power feed from the distribution pole in the street to the development site via an underground UGOH connection.

The subject is located within 15m of a power pole on the same side of the street hence the above clause **is** applicable. A suitable condition has been included in this report.; OR

Waste Management Comments

The submitted Waste Management Plan is acceptable subject to some minor amendments this has been conditioned.

Adequate provision for a minimum of 7-8 x 240L bins Comprising of 3 garbage (red lid), 3 recycling (yellow lid) and 1-2 FOGO (green lid).

This has been demonstrated on the submitted plans within a new formal bin storage area.

Tree Management & Landscape Comments

The only vegetation that requires comment for this application is a semi-mature, 4-5m tall *Cupaniopsis anacardioides* (Tuckeroo) on Council's Boundary Street verge, towards the western site boundary, of good health and condition that is protected by the DCP and is also part of a formal strategy in this street and area.

Despite there being no external works along this frontage that would pose a direct threat to its preservation, protection measures and a bond have still been imposed so as to avoid secondary damage caused by machinery, deliveries and similar.

A Concept Landscape Plan proposes to increase the amount of plant material and tree planting at this site which will both improve the appearance of the site as well as the quality of the communal open space for occupants, so relevant conditions supporting this scheme have been included.

Another street tree will not be possible on the Boundary Street verge given the corner location and a lack of available space due to line of sight requirements, with new trees also not possible along the secondary frontage, Winchester Road, given the narrow width of this verge and the presence of the existing public footpath which occupies the majority of this area.

1.3. Building Certification comments

It is recommended the fire safety upgrade works to be carried out in accordance the recommendation provided within the National Construction Code report prepared by Design Right Consulting, dated 25 October 2021 with some modification as outlined in the condition.

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

Clause 4.3 - Height of Buildings

1.0 Introduction

- This Clause 4.6 variation has been prepared in support of a Development Application for alterations and additions to an existing residential flat building at 27 Boundary Street, Clovelly (the site).
- This is a request to vary a *development standard* pursuant to the provisions of Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP 2012) the relevant clause being Clause 4.3(2) (Height of Building).
- The relevant maximum height of building control is **9.5m**.
- The relevant Height of Building control is a *development standard* for the purposes of the *EP&A Act 1979*. This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112* (SJD DB2).
- The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b).
- The relevant plans relied upon are those submitted by Alchemy Architecture, dated **28/03/2023. DA20 - R04**. This clause 4.6 request relates to the roof pitch at 17 degrees and a first floor level having 2.7m internal floor to ceiling height.

2.0 Development Standard to be Varied – 9.5m Maximum Height

The relevant *development standard* to be varied is the **9.5m** maximum height control under Clause 4.3(2). Clause 4.3 of the **RLEP 2012** relevantly provides:

4.3 Height of buildings

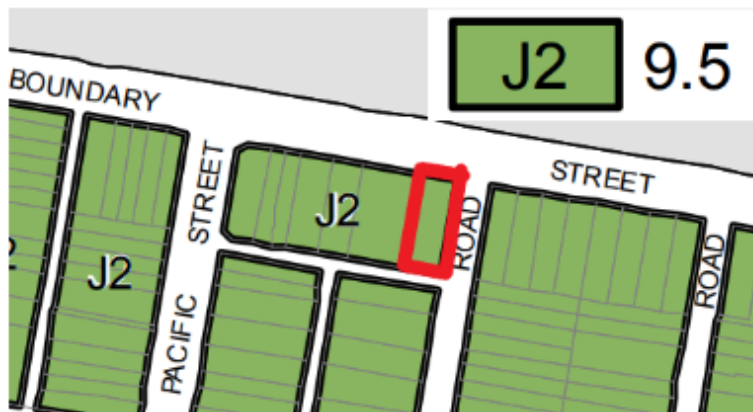
(1) *The objectives of this clause are as follows—*

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

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

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

The relevant height of buildings map is identified below:



3.0 Nature of Variation Sought

The requested variation is as follows:

Permissible maximum building height: **9.5m**

Proposed variation: The proposed new ridge line of the roof at RL 46.37 sits **365mm** above the maximum **9.5m** height limit measured above the site level existing being RL 36.50. Site level existing is the site level below the existing timber floor level.

The proposed maximum breach equates to a **3.84%** variation to the height standard.

The building breaches the 9.5m height limit up to a maximum of 9.865m above the site level existing.

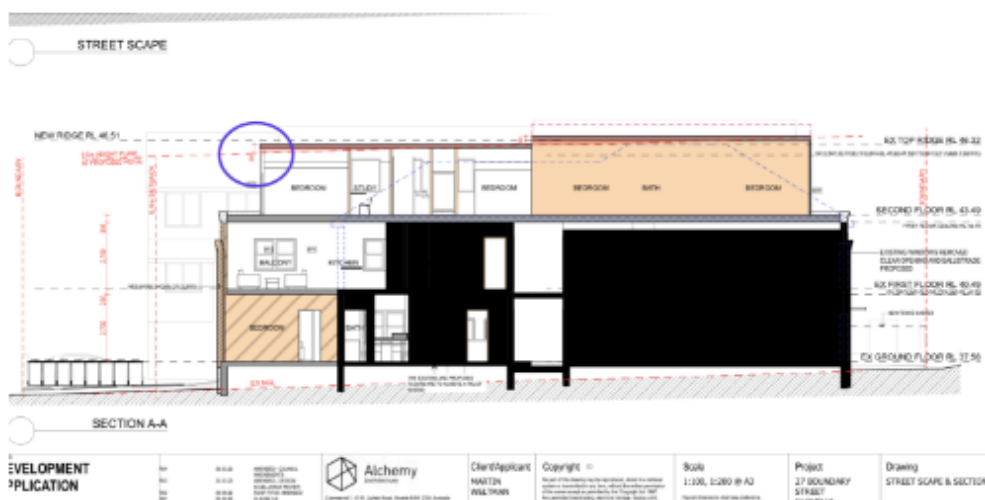


Figure A: Section A-A (DA20- R04) highlighting the maximum building height above site level existing resulting in a 365mm variation to the 9.5m control.
(Source: Alchemy Architecture, 28.3.2023. – R04)



Figure B: Street elevational denoting the extent of the breach above the maximum 9.5m height line viewed from the Boundary Street frontage
(Source: Alchemy Architecture, 28.3.2023 – RO4)



Figure C: Height plane diagrams demonstrating the area of the roof ridge above the 9.5m height limit
(Source: Alchemy Architecture, 28.3.2023 – DA20 R04)

4.0 Height – Development Standard

A development standard is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, maneuvering, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."*

The **9.5m** maximum height standard is a *development standard* as defined under the *EP&A Act 1979*.

5.0 Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP 2012)

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and 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.*

The proposed development does not strictly comply with the **9.5m** HOB development standard pursuant to cl4.3(2) of the **RLEP 2012**. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds also exist to justify contravening the development standard as detailed in section 7 of this report. The height variation sought is very minor and is the result of the pitch of the roof over sought to accommodate the new upper level attic level comprising only bedrooms and bathrooms. The bulk of the proposed roof structure sits below the compliant 9.5m height limit and it is only up to a maximum of 0.919m that projects above the height line.

Figures A - C above demonstrate the location and extent of the variation sought.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the RLEP 2012 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (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, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Sections below of this written request address relevant matters required under cl4.6(5) of the RLEP 2012.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

5.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl 4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better

environmental planning outcome" relative to a development that complies with the development standard.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH").

In Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

(1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and

(2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and

(3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and

(4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed those matters."

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

6.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

In dealing with the “unreasonable and unnecessary” Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Based on the above the subject Clause 4.6 request identifies the first method identified in *Wehbe*:

“Ways of establishing that compliance is unreasonable or unnecessary

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**.” (our emphasis).*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *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.*

COMMENT:

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation to the numerical standard.

In dealing with the control it is necessary to identify the purpose of the height control and then progress to dealing with the specific height objectives.

Further insight into the purpose of the standard can be obtained by investigating the Clause 4.3 Height of Buildings objective below:

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

As detailed in the Statement of Environmental Effects the surrounding area comprises an eclectic mix of housing including three-four storey residential flat buildings, semi-detached housing and detached dwellings. It is also characterised by a diverse range of housing by periodic styles including colonial dwellings, post-war, 1960s and 70s walk-up style apartments and more contemporary dwellings.

The proposed maximum height of the building as proposed to be altered and extended is generally in alignment with the height of the neighbouring residential flat buildings to the west at 25 and 23 Boundary Street, Clovelly. This is evidenced by the fact that the building at No. 25 comprises a lower pitched roof and exhibits a minor breach to the 9.5m height limit whilst the pitch of the three storey apartments at No. 23 Boundary Street is commensurate to the proposed development. The height variation is quite minor under the revised plans at 365mm as opposed to the original DA of about 1m. The 17 degree roof pitch is compatible with the surrounding building form.

The scale of the development at 3 storeys is consistent with the form of the two neighbouring developments to the west and comprises a similar-style of pitched roof where the highest point of the ridge exceeds the 9.5m height limit. Pitched roofs form part of the character and the variation enables the site to provide a pitched roof (see streetscape image below).

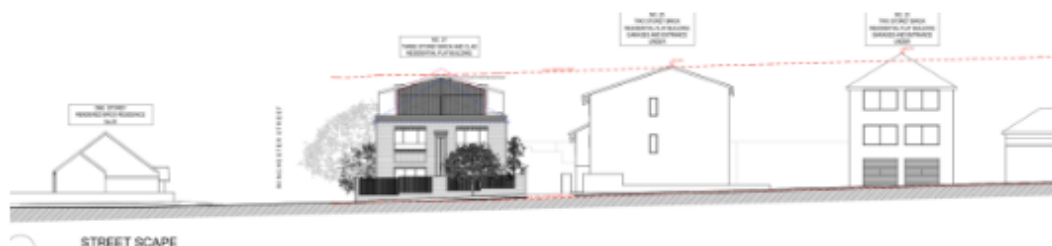


Figure D: Streetscape
(Source: Alchemy Architecture, 28.3.2023 - R04)

The overall building width and depth is also comparable to that of the neighbouring residential flat buildings and therefore the proposal is deemed to be of a compatible scale to the character of the immediate locality.

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

The development site is not within a heritage conservation area. Whilst it is located nearby to several locally listed heritage items the building as proposed to be modified is consistent with the neighbouring examples of residential flat buildings and is therefore compatible with the scale of adjacent items.

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

The design of the proposed alterations and additions to the existing residential flat building have been thoroughly tested in respect to its potential to impact neighbouring properties by way of overshadowing, solar access and privacy. The development includes the addition of a third storey attic level which is compatible in its overall form and scale to that of neighbouring residential flat buildings. The upper level does not read as a full additional level and occupies part of the level below.

The increased building height will not significantly impact solar access to the neighbouring units, nor does it result in major overshadowing of the units given the level of separation provided to the building at No. 25 Boundary Street.

Shadowing diagrams and sun eye views have been supplied in support of this DA. The plans confirm that five of the six apartments will receive at least 3 hours of unobstructed solar access to private open space courtyards and balconies during the mid-winter solstice.

Neighbouring living room windows and balconies to the west (that are east-facing) receive at least 2 hours in the morning as the new third level is recessed in 2-3m from the outer western wall below. Upper level units on the neighbouring property will continue to receive adequate sunlight throughout the year.

Visual privacy impacts from west-facing habitable room windows are capable of being managed through the installation of obscure glazing and / or high-sill openings. This approach will ensure direct overlooking to neighbouring balconies and living rooms is avoided. The extent of obscure glazing is shown on the plan below:



Figure E: Extent of obscure glazing to preserve privacy to neighbours to the west

7.0 4.6(3)(b) – Sufficient Environmental Planning Grounds

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to height and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all land of the same zoning.

The environmental planning grounds justification for the variation is provided as follows:

- The site slope and existing subfloor area contributes to the height variation and as such there is no practical solution to achieve strict compliance unless all of the floors and ceilings are lowered (i.e. demolished) which is contrary to ESD principles. The building would generally comply with height if it was built on a slab on ground as such the existing subfloor space and minor slope cause the breach as opposed to an inefficient design.
- The existing roof line exceeds the maximum height standard by 0.10m. The existing breach occurs due to the projection of a pitched roof form through the 9.5m height plane. The provision of a pitched roof results in a variation to the height control. A pitched roof better responds to the local character than say a flat roof. The 17 degree pitched roof maintains a level of consistency with the existing built form character.
- The height breach is very minor (365mm) and only relates to the uppermost section of the pitched roof (refer to 3D height plane). The main bulk of the roof is compliant with the 9.5m height level.
- The proposed alterations and additions do not significantly contribute additional bulk, scale or visual impacts to neighbouring properties. The additions sought contribute to an attic-style third level which is compatible with the surrounding built form. The additional level is recessive and does not read as a full additional level.

- The HOB exceedance does not unreasonably increase the overall bulk or scale of the development when viewed from the street and it only relates to the top of the ridge (max 365mm above the 9.5m height level).
- The development is consistent with the form and height observed on other neighbouring properties in the area.
- The development achieves and does not seek to exceed the anticipated scale and form on this site which is at the end of a row of unit blocks.
- The additional height does not significantly impact the amenity of neighbouring properties by way of additional overshadowing, blocking of solar access, view loss or visual privacy.
- Pedestrian amenity is reasonably preserved.
- It satisfies the provisions of RLEP 2012 and RDCP 2012.
- It satisfies the objectives and provisions of both State and Local planning policies.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to height. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

"1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,***
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,***
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A development, although technically over the height limit can satisfy the objectives of under S1.3 *EP&A Act 1979*.

The plans by Alchemy Architecture dated 28.3.2023 satisfy the objectives in bold given that:

- The proposal will provide a higher level of amenity for residents through the accommodation of double storey apartments within an upgraded building. This promotes the orderly development of the land.
- The proposed works are contained within the established footprint of the building and will not detrimentally impact the surrounding streetscapes.
- The form and height of the development is consistent with that of neighbouring residential flat buildings to the west, ensuring a consistent streetscape presentation is maintained in line with the established character.
- The alterations and additions promote good design and amenity outcomes for the residents of the property.
- There is no significant impacts to neighbouring properties resulting from the proposal by way of overshadowing, solar access or visual privacy.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the requested variation.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

In the present circumstances the positive planning benefits associated with the proposal are considered sufficient in their own right to justify the variation to the height control. The area where the variation occurs is quite limited and does not contribute to significant additional solar impact.

Additionally, there is a clear lack of adverse amenity impacts arising from the proposed development as it does not result in adverse overshadowing or privacy impacts to neighbouring residential properties.

In summary, the HOB variation is considered to be in the public interest given its ability to limit impacts but also because of its ability to provide the site-specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case.

Clause 4.6(4)(a)(ii) The proposed Development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the HOB standard, to reasonably satisfy the stated objectives of the zone.

R2 Low Density Residential

The objectives of the R2 Low Density Residential zone are as follows:

Zone R2 Low Density Residential

1 Objectives of zone

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

The following provides a review of the zone objectives:

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

The HOB variation does not adversely affect the low density scale and character of the existing residential flat building. The new roof comprises a slightly reduced pitch overall when compared to that of the existing building which accommodates the third attic level comfortably without resulting in a significant breach of the HOB standard. The roof projects through the 9.5m height plane in two areas. The two areas where the proposed roof projects outside the height plane measure at 360mm and 365mm which is considered to be minor.

Overall, the variation sought is considered to be minor and justified. The objective is satisfied.

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

Not relevant.

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

The development maintains the established width and depth of the existing building as well as its alignment, setbacks and general site planning. Collectively, the development maintains a level of compatibility with the neighbouring apartment buildings along Boundary Street and presents a maximum height to the top of the roof ridge which is compatible with the neighbouring properties. Apart from the access stairs the external walls of the upper level attic style addition are set in from the external walls of the building to ensure the new attic level does not read as a full additional storey. The dwelling presents as predominately a 2 storey building. The objective is satisfied.

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

As discussed, the proposed development will not significantly compromise the amenity of neighbouring properties by way of overshadowing, obstruction of solar access or impacts to visual privacy. Future residents of the subject building will experience superior amenity outcomes arising from the installation of two-storey apartments with improved internal functionality and increased living spaces. The objective is satisfied.

- ***To encourage housing affordability***

Not relevant.

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

Not relevant.

Based on the above and matters raised in this height variation request the consent authority can be reasonably satisfied that the zone objectives are satisfied.

8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the RLEP.

As we understand Council has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary.

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that 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, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is specific to this site due to specific site based particulars. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Height of Building development standard under cl4.3 of **RLEP 2012** and the building control under **cl4.3** of the RLEP is a *development standard* and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the RLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the RLEP 2012 and is generally consistent with the relevant objectives of the R2 Low Density Residential zone despite the existence of EURs and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed alterations and additions to the existing residential flat building will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

- The site slope and existing subfloor area contributes to the height variation and as such there is no viable potential to comply unless all of the floors and ceilings are lowered (i.e. demolished) which is contrary to ESD principles. The building would generally comply with height if it was built on a slab on ground as such the existing subfloor space and minor slope cause the breach.
- The proposed development includes a pitched roof form which is compatible with that of neighbouring properties. The 17 degree pitch maintains a level of consistency with the existing built form character observed along the southern side of Boundary Street in this location.
- The height breach is very minor (365mm) and only relates to the uppermost section of the pitched roof.

- The main bulk of the roof form below the ridge is below the compliant 9.5m height level, ensuring a compatible overall building bulk and scale is achieved.
- The proposed alterations and additions are minor in their overall scale and do not contribute additional bulk, scale or visual impacts to neighbouring properties.
- The HOB exceedance does not add to the overall bulk or scale of the development when viewed from the street or other neighbouring properties as the breach only relates to the top of the ridge (max 265mm above the 9.5m height level).
- The development is consistent with the form and height breaches observed on other neighbouring properties in the area.
- The proposal reasonably preserves the residential amenity of the locality.
- The additional height does not significantly impact the amenity of neighbouring properties by way of additional overshadowing, blocking of solar access, views or visual privacy.
- The proposal satisfies the provisions of RLEP 2012 and RDCP 2012.
- The proposal satisfies the objectives and provisions of both State and Local planning policies.

Clause 4.4 Floor Space Ratio

1.0 Introduction

- This **Clause 4.6** variation to FSR has been prepared in support of a Development Application for alterations and additions to an existing residential flat building at 27 Boundary Street, Clovelly (the site).
- This is a request to vary a *development standard* pursuant to the provisions of Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP) the relevant clause being Clause 4.4(2) (Floor Space Ratio).
- The relevant maximum floor space ratio (FSR) development standard is **0.5:1**.
- The area of the subject site is 467.8m². A maximum total gross floor area of 233.9m² is permitted under the FSR standard.
- The proposed total gross floor area (GFA) of the development resulting from the alterations and additions is 475.72m² which equates to a FSR of **1.01:1**. Clause 4.4 2(A)(b) permits a dwelling FSR at 0.65:1 for a site that is more than 450sqm but less than 600sqm.
- The relevant plans relied upon are those identified as the plans prepared by **Alchemy Architecture dated 28.3.2023 – R04**.
- The requested FSR variation is 0.36:1 if applying the dwelling house FSR control and **0.51** if adopting the base FSR control as per the FSR mapping under the RLEP 2012. The current FSR variation is 0.22:1 thus the additional FSR is 0.29:1 when compared to the existing.
- The FSR control is a *development standard* for the purposes of the *EP&A Act 1979*.
- This request to vary the FSR development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action"), *Wehbe v Pittwater Council*, *Big Property Pty Ltd v Randwick City Council* [2021] and *SJD DB2 Pty Ltd v Woollahra Council* [2020] NSWLEC 1112 (SJD DB2).
- The request addresses those relevant provisions of Clause 4.6 under RLEP 2012 and sets out the reasons for why strict application of the FSR standard in this instance is unreasonable and unnecessary. Further, it details numerous sufficient environmental planning grounds to support the variation sought.

2.0 Development Standard to be Varied – Floor Space Ratio

The relevant *development standard* to be varied is the 0.5:1 FSR control under Clause 4.4(2). Clause 4.4 of RLEP relevantly provides:

4.4 Floor space ratio

(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.*

The relevant FSR map is identified below:

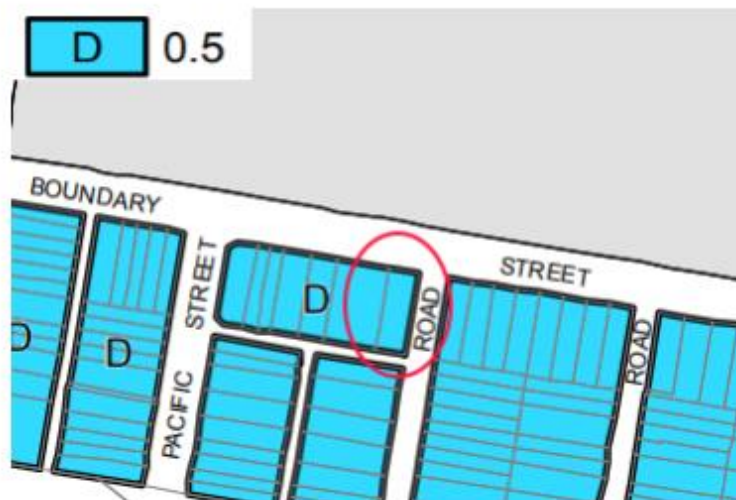


Figure 1: FSR under RLEP (Source: FSR_006 RLEP)

The subject site is mapped "D" – 0.5:1 (max).

3.0 Nature of Variation Sought

The requested variation is as follows:

The proposal has a permitted FSR as follows:

Site Area: 467.8m²

RLEP MAXIMUM FSR = **0.5:1**

An FSR of **0.5:1** equates to a total permissible GFA of **233.9m²**.

The proposed development has total gross floor areas (GFA) of **475.72m²**.

This is equal to a FSR of **1.01:1** and a **0.51:1** variation to the FSR standard.

4.0 Floor Space Ratio – Development Standard

A development standard is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*

- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The **0.5:1** maximum floor space ratio standard is a *development standard* as defined under the *EP&A Act 1979*.

5.0 Clause 4.6 of Randwick Local Environmental Plan 2012

The following provides a response to relevant Clause 4.6 provisions:

Clause 4.6(2) provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of a development standard and 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.***

The proposed development does not comply with the FSR development standard pursuant to cl4.4 of the RLEP 2012. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the RLEP 2012 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (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, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Sections below of this written request addresses the matters required under cl4.6(5) of the RLEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development.

Cl 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

6.0 Relevant Decisions

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. There is no provision in RLEP clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (**the DA**). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately **44%** (or 6.51m) – and a floor space ratio (**FSR**) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately **41%**.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

Big Property Pty Ltd v Randwick (Big Property)

The appropriate determination of desired future character was dealt with in the recent case of *Big Property Pty Ltd v Randwick City Council* [2021] (herein '*Big Property*'). This decision was also followed by *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] (herein '*HPG*').

Big Property resulted in a decision of Commissioner O'Neill which was an appeal by Big Property against the refusal of a development application for alterations and additions to an approved residential flat building, including the provision of additional affordable rental housing units and the construction of an additional storey.

The proposal exceeded the height and FSR development standards and Council contended that the clause 4.6 request was not well founded because the proposal was incompatible with the local character of the area, primarily due to its bulk and scale. In *Big Property* the Applicant claimed that the height and FSR exceedances were a justified response to the provision of two additional affordable housing units.

In considering the clause 4.6 request and desired future character, Commissioner O'Neill held that the desired future character of an area is not determined solely by the development standards that control building envelopes for the area. Commissioner O'Neill held that development standards for building envelopes are frequently generic standards which do not account for existing and approved development, site amalgamations, SEPP allowances, heritage issues or the nuances of an individual site. The Commissioner expressly referenced *SJD*, and went on to hold that:

"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 realization 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 realisation of 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" [at44]

Commissioner O'Neill found that the exceedance of height/FSR standards due to the provision of affordable housing units was an environmental planning ground and thus the clause 4.6 request was a well-founded request. Commissioner O'Neill also expressly referenced the fact that some State Environmental Planning Instruments, such as that for Affordable Rental Housing, 'incentivise the provision by the private sector of in-fill affordable housing by providing additional GFA above the otherwise applicable development standards that determine the building envelope for a particular site'. This too must be factored into any consideration of what constitutes the 'desired future character' of an area.

7.0 **Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ at states as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Based on the above the following identifies the first method identified in *Wehbe*:

"Ways of establishing that compliance is unreasonable or unnecessary"

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the **objectives of the development standard are achieved notwithstanding non-compliance with the standard**: (our emphasis)*

Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

- *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.*

Having considered the above the Applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation to the standard.

In dealing with the control it is necessary to identify the purpose of the FSR control and then progress to dealing with the consistency or otherwise with the FSR objectives. The first consideration relates to overall scale of a building given that both FSR and height determines the scale of a building to another building or natural feature. In this instance, the residential flat building comprising the proposed alterations and additions present as a two storey built form with recessive upper roof level.

The building is also contained behind the established front setback and within side and rear setbacks that are consistent with neighbouring residential properties. The proposal provides a suitable bulk and scale having regard to the form and presentation of the building within the streetscapes. From both street frontages the built form is considered to be appropriate in terms of its overall visual fit.

The **0.51:1** variation to the maximum 0.5:1 FSR does not create excessive bulk or scale given the recessive nature of the roof element. The upper level roof element is recessive and subservient to the level below (see Figure 2 below). To this end, it is important to appreciate that most of the adjoining flat building developments breach the current 0.5:1 control. Most of the surrounding three storey walk-up flats situated on neighbouring sites are long established buildings pre-dating the current LEP. The site also benefits from the physical separation afforded by the width of the two streets.

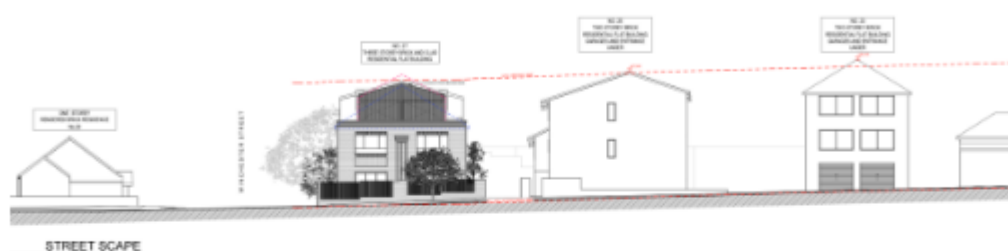


Figure 2: View of the proposed development within the existing streetscape

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case include both built form and amenity having regard to solar, visual and privacy impacts. When considered within the framework of the objectives the purpose of the FSR control requires the development to achieve an appropriate built form and provide reasonable amenity impacts as a result of the bulk and scale.

The following justification is provided.

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

The proposal seeks to vary the FSR development standard due to the site-specific circumstances of this case. The development is very modest in its' overall bulk and scale. The upper level roof element will not contribute to inappropriate bulk and scale as it will be contained within the existing floor plate. The proposed upper level setbacks are adequate to create a recessive upper roof element. The habitable nature of the roof level is suitably disguised to ensure the building continues to read predominantly as a 2 storey building.

The size and scale of the development as proposed is compatible to that of neighbouring properties to the west and scattered throughout the surrounding area. Notwithstanding the need to be consistent and compatible with the 'desired future characteristics' of the locality, the development has existing use rights as a residential flat building and should be permitted to achieve a scale and form which is consistent and compatible with other 3 storey flat buildings in the streetscape.

The likelihood of existing flat buildings being demolished to make way for a new dwelling max 0.65:1 is unlikely. On this basis the streetscape character will continue to be informed by the flat buildings for decades to come given that existing flats at around 1:1 FSR will not be demolished for dwellings at 0.65:1.

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

The proposed alterations and additions contributes additional articulation and fenestration to the facades and overall building form. The incorporation of a new third storey setback and integrated behind the existing two storey façade assists in contributing a newly defined top of building subtle built form evolution between the original and the new. This culminates in improved built form design all around and enhanced visual interest in the streetscape. The upper level is set in from the side elevations to reduce the perceived scale and form.

The alterations and additions have been designed and tailored to comply with the relevant energy and water saving requirements of BASIX and NatHERS. The design and layout of apartments ensures improved solar amenity and natural cross ventilation together with passive thermal elements to control internal climates and limit dependence on mechanical heating and cooling.

(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 surrounding area comprises an eclectic mix of housing including three-four storey residential flat buildings, semi-detached and detached dwellings. The area is also characterised by a diverse range of housing by period styles including colonial dwellings, post WW1 flats (i.e the subject site), California bungalow inspired semis and detached dwellings, 1960's and 70's walk-up brick flats and more contemporary detached dwellings. Predominant built form and site features in the surrounding area include:

- Pitched roofs of hip / gable design
- Face-brick construction and / or rendered facades
- Front boundary walls or fences (no particular theme or consistency)
- High percentage of building site coverage with modest rear yards

As stated above it is highly unlikely that the existing flat buildings will be demolished to build smaller residences that complied with the 0.65:1. The residential flat building character is to be retained for decades to come. Whilst the subject site is not located within a conservation area it is located within reasonably close proximity to a number of heritage items comprising the abovementioned built form and landscape characteristics. Unlike those neighbouring examples, the subject proposal delivers a far superior residential amenity for residents and vastly improved built form design outcome. The overall two storey form and roof element for the upper level presents a familiar built form which will not detract from the residential character. The heritage items will continue to be recognised amongst the dwellings and existing flats.

(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

Overshadowing diagrams and sun access plans have been supplied in support of this DA. The plans confirm that five of the six apartments will receive at least 3 hours of unobstructed solar access to private open space courtyards and balconies during the mid-winter solstice.

Neighbouring living room windows and balconies to the west (that are east-facing) unlikely receive 3 hours of direct sunlight, however, 2 hours in the morning will generally be maintained as a result of the new third level being recessed in 2-3m from the outer western wall below. Upper level units on the neighbouring property will continue to

receive good sunlight throughout the year. The revised plans improve the solar access to the surrounding properties due to the reduction in the overall bulk and scale.

Five units have been designed and constructed to be naturally cross-ventilated.

Visual privacy impacts from west-facing habitable room windows is capable of being managed through the installation of obscure glazing and / or high-sill openings. This approach will ensure direct overlooking to neighbouring balconies and living rooms is avoided.

The changes to the internal layouts will not compromise acoustic amenity beyond established situation.

The proposal does not obstruct any important view corridors or water views from neighbouring properties.

8.0 4.6(3)(b) – SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to FSR and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R2 Low Density Residential.

The environmental planning grounds justification for the FSR variation is provided as follows:

- The existing residential flat building is an existing, long-established use positioned on the southern side of Boundary Street. It is part of a number of 2-3 storey residential flat buildings in the area established prior to the current version of the RLEP and constructed in the 1960s. Accordingly, there is a defined and specific land use patterns and character observed along this part of Boundary Street which does not strictly align with surrounding low density detached and semi-detached houses. The subject building, being the smallest of the three in immediate proximity seeks modest alterations and additions which will improve the intra site amenity of the apartments without any undue burden upon neighbouring dwellings or the streetscape.
- The existing GFA at 337.85sqm exceeds the maximum FSR standard at approximately 0.72:1, owing to the existing use and age of the development. Whilst the numeric extent of the alterations and additions sought are sizeable, in the overall built form physical context and sitting, it is considered relatively minor in that:
 - The ground and L1 additions are contained to the rear of the site. The upper level is recessed minimising the overall appearance of bulk and scale.
 - The proposal does not vastly increase the site density, maintaining a maximum of 6 apartments, contributing to improved internal amenity through larger floor areas as opposed to the addition of new units.
 - The increase in the vertical footprint of the building falls still largely within a compliant height plane and results in negligible impacts to neighbouring properties by way of overshadowing and solar access.
 - Improved ceiling heights at level 1
- The roof structure is a low-rise form, with modest window openings. The highest points of the roof structure have been sited such that they are visually contained behind the first floor parapet when viewed from the street below. A

setback behind the front parapet is also provided to the outer wall of the new upper level attics to ensure any additional massing is visually concealed from the street below. The design approach is considered to respect the established and prevailing height and form of the buildings to Boundary Street and the incorporation of the new upper level does not disrupt the rhythm or reading of the streetscape.

- Important original features of the building façade are to be maintained and restored under the proposal. The development includes the partial restoration of the facade. The contemporary design approach to the additions presents a sympathetic and well-refined design response in the context.
- There are no adverse environmental impacts directly attributable to the overall GFA proposed. The GFA is wholly contained within compliant building setbacks and the density is within the environmental capacity of the site, demonstrated in the lack of environmental impacts to neighbouring properties and the public domain.
- The overall scale of the development is appropriate having regard to the established built form in the street, particularly those immediate 3 storey flat buildings to the west. The proposed additional GFA does not present inappropriate massing or the appearance of additional bulk and scale when viewed from the street frontages.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to FSR. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

“1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A development that complies with the land use zoning of the site (R2 Low Density Residential) satisfies the objectives of under S1.3 *EP&A Act 1979*.

The plans by Alchemy Architecture dated **28.3.2023** and specifically the FSR variations satisfy the objectives in bold given that:

- The development provides for residential land use in line with Council's strategic planning intent and the RLEP 2012.
- The development offers better and proper management of the State's land resources by providing a more efficient use of private land that is well positioned to take advantage of its proximity to public transport, jobs, services and local and regional leisure, recreation, retail and cultural activities.
- The site has the capacity to support the proposed breaches to FSR and residential density sought.
- The proposal will not cause adverse environmental impacts to neighbouring properties as outlined in Section 7 and detailed in the Statement of Environmental Effects.
- The development maintains and seeks to actively restore original features of the façade which will contribute to the enhanced visual appearance and aesthetic of the built form when viewed in its streetscape context.
- The proposal exhibits an acceptable standard of internal and external amenity for the future resident(s) and represents a considered in-fill development which fits well within the urban context.
- The development will be constructed to relevant Australian Standards and provisions under the Building Code of Australia.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the FSR variation.

Clause 4.6(4)(a)(ii) The proposed development will be in the Public Interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the FSR standard, to reasonably satisfy the stated objectives of the zone.

Zone R2 Low Density Residential

1 Objectives of zone

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

The following provides a review of the zone objectives:

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

The development provides improved housing to meet the needs of the community. The built form design, massing and overall density is compatible with that of neighbouring residential properties in the street and maintains a modest overall density for the site.

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

Not relevant.

- ***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.***

As addressed above, the scale of the development as proposed to be altered and extended is compatible with those remnant flat building examples in the streetscape. Whilst not strictly aligned with traditional low density built form characteristics, the subject R2 zone made up of the surrounding area comprises an eclectic mix of housing. The proposal is compatible when viewed in the streetscape context of this section of Boundary Street and is therefore considered acceptable given that there is no one truly definitive building character type in the area, particularly with regards to height, scale and densities.

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

The amenity of the subject residents occupying the development will be vastly enhanced through the improvements of internal layouts and creation of larger apartments, including some two-storey residences.

The environmental amenity of neighbouring properties has been tested in depth as part of the DA. Neighbouring residents will continue to receive sufficient access to sunlight, natural prevailing breezes and visual and acoustic privacy.

- ***To encourage housing affordability***

Apartment types proposed have respond to demand within the area. The proposal seeks to reconfigure internal areas of existing 1-bedroom apartments to provide for two x 2-bedroom and one x 3-bedroom apartment to better cater for local demand and provide greater diversity of housing types within the development. The inclusion of greater housing diversity should work to improve housing affordability in the area through the meeting of local demand.

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

Not relevant.

8.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the RLEP.

The Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that 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, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the FSR development standard under cl4.4(2) of RLEP 2012 and the FSR control under cl4.4 of the RLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the RLEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the **RLEP 2012** and is *generally* consistent with the relevant objectives of the R2 Low Density Residential zone and therefore, the proposed development is in the public interest;

- Notwithstanding the contravention of the development standard, the proposed development will not result in adverse environmental harm in that the amenity of neighbouring properties and the surrounding area will be reasonably maintained.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the **FSR** development standard, including:

- The existing residential flat building is a long-established use which contributes towards a defined and specific land use patterns and character observed along this part of Boundary Street. The proposed alterations and additions deliver an overall built form scale and density which is compatible with the streetscape in this part of the street.
- The existing GFA at 337.85sqm exceeds the maximum FSR standard at approximately 0.72:1, owing to the existing use and age of the development. Whilst the numeric extent of the alterations and additions sought are sizeable, in the overall built form physical context and sitting, it is considered relatively minor in that:
 - The additions are contained to the rear of the site and within a recessed new upper level, minimising the overall appearance of bulk and scale.
 - The proposal does not vastly increase the site density, maintaining a maximum of 6 apartments, contributing to improved internal amenity through larger floor areas as opposed to the addition of new units.
 - The increase in the vertical footprint of the building falls still largely within a compliant 9.5m height plane and results in negligible impacts to neighbouring properties by way of overshadowing and solar access.
- The proposed new roof structure includes a low-rise form, with modest window openings (with obscure glazing in the west elevation). The highest points of the roof structure have been sited such that they are visually contained behind the first floor parapet when viewed from the street below. The design approach is considered to respect the established and prevailing height and form of the buildings to Boundary Street and the incorporation of the new upper level does not disrupt the rhythm or reading of the streetscape.
- Important original features of the building façade are to be maintained and restored under the proposal. The development includes the partial restoration of the facade. The contemporary design approach to the additions presents a sympathetic and well-refined design response in the context.
- There are no adverse environmental impacts directly attributable to the overall GFA proposed. The GFA is wholly contained within compliant building setbacks and the density is within the environmental capacity of the site, demonstrated in the lack of environmental impacts to neighbouring properties and the public domain.
- The overall scale of the development is appropriate having regard to the established built form in the street, particularly those immediate 3 storey flat buildings to the west. The proposed additional GFA does not present inappropriate massing or the appearance of additional bulk and scale when viewed from the street frontages.

Appendix 3: SEPP 65 Compliance Table**Apartment Design Guide (ADG)**

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

Clause	Requirement	Proposal	Compliance
Part 3: Siting the Development			
3A -1	Site Analysis		
	Each element in the Site Analysis Checklist should be addressed.	Site analysis satisfactory and addresses elements in the checklist.	Yes
3B-1	Orientation		
	Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1).	The building has direct entry from Winchester Street for access to the residential units above.	Yes
	Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be oriented to the east and west.	Existing building which is oriented north south with three street frontages. The additional overshadowing impacts as a result of the rear extension and roof addition above the existing building is acceptable and will not result in any unreasonable overshadowing impacts to the neighbouring properties as discussed in the relevant section of this report.	Yes
3B-2	Orientation		
	Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space (50% direct sunlight to the principal part of the communal open space for 2 hours) and 4A Solar and daylight access.	Acceptable.	Complies with the objectives of the control.
	Solar access to living rooms, balconies and private open spaces of neighbours should be considered.		
	Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.		
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.		

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Clause	Requirement	Proposal	Compliance
	Overshadowing should be minimised to the south or downhill by increased upper-level setbacks.		
	A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.		
3D-1	Communal and Public Open Space		
	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	Minimum required for the site = 116.95m ² Approx. 66.27m ² of usable communal open space is provided to the rear of the building for outdoor living and recreation. Currently the rear POS is not utilized to its full potential and does not function appropriately for its users. The proposed development will be improving the POS by providing additional amenity (i.e. landscaping, BBQ area, clothesline and furniture) to the rear of the building which will better serve the needs of the residents and enhance their quality of life as well as enhancing the appearance of the development as viewed from the site and streetscape.	Complies with the objectives of the control.
	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).	Acceptable.	Refer to Section 9.1 – Discussion of Key Issues.
3E-1	Deep Soil Zones		
	Deep soil zones are to meet the following requirements: Site Area: Less than 650m ² = 7% (32.746m ²) Minimum dimensions of deep soil = Nil Site area = 467.8m ²	The proposal provides 202.54m ² (or 43%) of deep soil landscaping at the subject site.	Yes
3F-1	Visual Privacy		
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	The existing and proposed balconies are orientated to face the street and will not result in any unreasonable overlooking impacts to neighbouring properties.	Yes
3J-1	Bicycle and Car Parking		
	The minimum car parking requirement for residents and visitors is set out in the Guide to	1 shared car parking spaces is proposed for the six (6) units. The site is located in proximity to public	Yes. Refer to 1.2 Development Engineers

Clause	Requirement	Proposal	Compliance
	<p>Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p>	<p>transport services. Four (4) bicycle parking space are provided in front of the carspace to the rear of the building.</p> <p>The proposed parking arrangement has been reviewed by Council's Engineers who raises no objection subject to conditions of consent.</p>	<p>comments in the referral section of this report under Appendix 1.</p>
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p>	<p>83.3% of units (5/6 units) achieve in excess of 2 hours solar access to part of the living area and POS.</p>	<p>Yes</p>
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>Only Unit 3 will receive less than 2 hours of direct sunlight.</p>	<p>Yes</p>
4B	Natural Ventilation		
	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p>	<p>All units are naturally cross-ventilated.</p>	<p>Yes</p>
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable Rooms – 2.7m Non-habitable – 2.4m</p>	<p>Units 1, 2 & 3 have ceiling heights of 2.7m.</p> <p>Units 4, 5 & 6 on the first floor level have ceiling heights of 2.7m to the living areas; however, on the second floor attic level the bedrooms and bathrooms have ceiling height which vary from 2.2m and rake up to 3m. Two thirds of the bedrooms have minimum sill heights of 2.4m.</p> <p>The proposed ceiling levels are acceptable for an attic roof addition in that reasonable levels of amenity are provide to these units with adequate solar access and ventilation. The ceiling heights to these units will comply with the minimum National Construction</p>	<p>Complies with the objectives of the control.</p>

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Clause	Requirement	Proposal	Compliance
		Code (NCC) of Australia requirements for ceiling height.	
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <p>Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m²</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p>	All units comply with the minimum internal areas.	Yes
	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	All habitable rooms comprise of a window opening for the purposes of light and will not have an area less than 10% of the floor area of the room.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	All habitable room depths are within the maximum limit.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	All apartments have open plan layouts. The maximum depth does not exceed 8m from the external windows / glazed balcony doors.	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Bedrooms will achieve minimum area requirements.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms have a minimum dimension of 3m.	Yes
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments • 4m for 2- and 3-bedroom apartments 	The dimensions are greater than the minimum width requirement.	Yes
4E	Apartment Size and Layout		
	<p>All apartments are required to have primary balconies as follows:</p> <p>Studio apartments 4m² 1-bedroom apartments 8m² 2m dim. 2-bedroom apartments 10m² 2m dim. 3-bedroom apartments 12m² 2.4m dim.</p>	All the private open space areas are adequate and are above the minimum requirement.	Yes

Clause	Requirement	Proposal	Compliance
	The minimum balcony depth to be counted as contributing to the balcony area is 1m		
	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	<p>The proposed development will provide adequate level of amenity for the occupants of the existing and new additions to the existing dwellings. The Private Open Spaces (POS) for Units 1 & 2 on the ground floor are located to the northern end of the building facing Boundary Street and receive a minimum of 3 hours of solar access. These POS have minimum dimensions of 3m x 4m and are off the main living areas of the dwellings. Fencing having a height of 1.6m is proposed along the northern boundary with part of the fencing being of open design to provide some level of privacy to the POS.</p> <p>The private open space to Unit 3 on the ground floor level is located to the western side of the building and does have a northerly aspect to part of the area. The POS has minimum dimensions of 3m x 4m and also has direct access from the POS into the communal open space.</p>	Yes
4F	Common Circulation and Spaces		
	The maximum number of apartments off a circulation core on a single level is eight	The maximum number of apartments of a single lift core is 6.	Yes
4G	Storage		
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>Studio apartments 4m³ 1 bedroom apartments 6m³ 2 bedroom apartments 8m³ 3+ bedroom apartments 10m³ At least 50% of the required storage is to be located within the apartment</p>	<p>Unit 1 (1 Bedroom) = 1.28m³ Unit 2 (1 Bedroom) = 1.28m³ Unit 3 (2 Bedroom) = 2.2m³ Unit 4 (2 Bedroom) = 1.28m³ Unit 5 (2 Bedroom) = 1.96m³ Unit 6 (3 Bedroom) = 1.5m³</p> <p>There is no basement level or common areas which could accommodate additional storage area. The amended plans have incorporated additional storage area where possible without compromise the amenity of the units.</p> <p>Notwithstanding the above, there will be informal storage areas that</p>	No. However, complies with the objectives of the control.

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Clause	Requirement	Proposal	Compliance
		<p>would be incorporated within the units, (i.e. TV units and cabinetry)</p> <p>Additionally, the amended plans show that the majority of storage is located in the kitchens, laundry, bathrooms, or bedrooms which are of generous size and could accommodate additional movable cabinetry.</p> <p>Overall, the development is improving the amenity and storage areas within the existing units which meets the intention of this control</p>	
4K	Apartment mix		
	<p>Objective 4K-1</p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future</p>	<p>The proposed development includes a mixture of 1, 2 and 3 bedroom apartments which is an appropriate mix for a development with only six apartments.</p> <p>The apartments provide for open plan layout which will improve usability of the units and can be easily adapted to suit the occupants needs into the future.</p>	Yes

Appendix 4: DCP Compliance Table

4.1 Section B6: Recycling and Waste Management

DCP Clause	Control	Proposal	Compliance Yes/No/N/A
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.	The bin area is located at the rear of the site adjacent to the parking area.	Yes
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.	The bin area is screened and landscaping is proposed adjacent to the bin area within the rear communal area as buffer.	Complies.
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.	The bin area is in a secure location and landscaping is provided to minimize visual impact on the subject site and public domain.	Complies
	(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).	The bin area is conveniently located to allow for unobstructed access between the storage area and collection point.	Complies
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.	The proposed units are adequately sized to enable single day's waste storage.	Complies
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.	The bin area is located externally adjacent an open parking space.	N/A.

4.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3.	Parking & Service Delivery Requirements		
	Car parking requirements: <ul style="list-style-type: none"> • 1 space per 2 studios • 1 space per 1-bedroom unit (over 40m²) • 1.2 spaces per 2-bedroom unit • 1.5 spaces per 3 or more bedroom unit • 1 visitor space per 4 dwellings 	<u>Existing Situation</u> The site currently comprises of 6 x 1 bedroom units generating a parking demand of 7 spaces (including 1 visitor space) when adopting the above parking rates. As there is no off-street parking currently provided	No.. The proposed parking space, location and dimension is supported by Council's Development Engineer, (refer to Appendix 1 - Referrals).

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		<p>on the site, this demand is currently being burdened by the surrounding street networks. The subject site's 3 street frontages on Boundary St, Winchester Road and Winchester Lane assist in restricting parking demand to the site frontages with minimal impact across neighbouring property's frontages.</p> <p><i>Proposed Development</i> The proposal does not change the total number of units which shall remain at 6 but will result in a changed unit configuration comprising of 2 x 1 bedroom, 3 x 2 bedroom and 1 x 3 bedrooms units.</p> <p>Parking Required under DCP:</p> <p>= (2 x 1-bedrooms x 1) + (3 x 2-bedrooms x 1.2) + (1 x 3-bedroom x 1.5) + 1 (visitor parking space) = 2 + 3.6 + 1.5 + 1 = 8.1 = say 8 spaces</p> <p>Parking demand required under the DCP for the proposed development will therefore increase by 1 space from 7 to 8 spaces as a result of the proposed development.</p> <p>= 2 + 3.6 + 1.5 +</p>	
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 	3 Bicycle spaces are provided.	Yes

4.2 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		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	A minimum of 50% of the site area (233.9m ²) is to be landscaped open space.	<p>Site area = 467.8m²</p> <p>219.94m² (or 47%) of landscaped area.</p> <p>The non-compliance is acceptable in that it is minor and the proposed development is improving deep soil planting on the site which is well over the minimum control requirement. The development also well over ADG SEPP requirement.</p>	Complies with ADG and objectives of this control.
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (116.95m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	The proposal provides 202.54m ² (or 43%) of deep soil landscaping at the subject site.	Yes
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.		Yes
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.		Yes
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.		Yes
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.		Yes
2.3	Private and communal open space		
2.3.1	Private open space		
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p>	Units 1, 2 & 3 on the ground floor level will have direct access from the living area to POS.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	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.	All dwellings will have private courtyards or balconies with a minimum area of 8m ² .	Yes
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.	Approx. 66.27m ² of usable communal open space is provided to the rear of the building for outdoor living and recreation to serve the needs of the residents and enhance their quality of life as well as enhancing the appearance of the development as viewed from the site and streetscape.	Yes
3.	Building Envelope		
3.1	Floor space ratio		
	0.5:1	1.01:1 Refer to the Key Issues Section of this report.	No. Refer to Clause 4.6 – Exceptions to development standards under Section 7.
3.2	Building height		
	9.5m	10m Refer to the Key Issues Section of this report.	No. Refer to Clause 4.6 – Exceptions to development standards under Section 7.
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.	Wall depth: <ul style="list-style-type: none"> Ground & First Floor level 25.26m (east) Second Floor addition 16.88m (east) Max. wall length on Ground & First Floor level is 13.78m (west) Dormer windows are proposed to break 	No. Eastern side does not comply. Refer to Section 9.1 Discussion of key issues.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		up the wall. Maximum wall length on the second floor level is 6.82m, (west).	
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>	<p>The site is a corner allotment.</p> <p>There will be no change to the ground floor and first floor level. The second floor attic level is setback 4.7m from the boundary off Boundary Street frontage and 3.2m from Winchester Street frontage.</p> <p>The proposed setbacks are generally consistent with the prevailing setback of adjoining development in the streetscape and will meet the objectives of the control.</p>	Yes
3.4.2	Side setback		
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> 12m ≤ Site frontage width < 14m: 2m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> Create articulations to the building facades. Reserve open space areas and provide opportunities for landscaping. Provide building separation. Improve visual amenity and outlook from the development and adjoining residences. Provide visual and acoustic privacy for the development and the adjoining residences. Ensure solar access and natural ventilation for the 	<p>Lot width is less than 12.8m = 2m</p> <p>The proposed side setbacks to the upper level on the second floor level are setback greater than 2m from the side boundaries with the exception of the dormer windows to Units 4 (1.74m) and 5 (1.65m).</p> <p>The non compliance is considered acceptable in that the dormer windows provides articulation to the roof design breaking up the wall elements and has minimal environmental amenity impacts on neighbouring properties and streetscape. The dormer windows blend in with the design of the roof and</p>	Majority of the building complies, with the exception of the dormer windows. Complies with the objectives of the control.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>development and the adjoining residences.</p> <p>(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.</p>	remains consistent with the objectives.	
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (36.545m) or 5m, whichever is the greater.	<p>8m on ground floor</p> <p>9.65m on second floor level</p>	Yes
4.	Building Design		
4.1	Building façade		
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(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.</p> <p>(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.</p> <p>(vi) Conceal building services and pipes within the balcony slabs.</p>	<p>The building is designed to address all streets and laneway frontages and the front wall alignments are parallel with the street property boundary.</p> <p>Dormer windows are proposed within the roof attic addition to break up the walls.</p> <p>Additional landscaping is proposed to the front and rear of the building to soften the façade as viewed from the neighbouring properties and streetscape/public domain.</p>	Complies with the objectives of the control.
4.2	Roof design		
	<p>(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.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p>	Pitched attic roof form with dorms are proposed which is compatible with traditional pitched roofs in the area.	Yes

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

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development.	The second floor attic level has a floor space of 62% of the storey immediately below. The second floor level when viewed from surrounding public and private domain has an appearance of a part wall and roof form with dormer windows as an integrated element of the roof.	
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	The proposed development will have a maximum external wall height of approx. 9.12m from natural ground line. The non-compliance with the external wall height will not result in any unreasonable adverse visual amenity impacts or unreasonable additional overshadowing to the adjoining properties.	No. Refer to Section 9.1 Discussion of key issues.
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	Ground and First floor level = 2.7m The roof attic ceiling heights vary from 2.2m and rake up to 3m. Two thirds of the bedrooms have minimum sill heights of 2.4m.	Second floor attic level does not comply. Refer to Section 9.1 Discussion of key issues.
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Clear delineation is provided between pedestrian and vehicular access.	Yes
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. 	The Internal circulation space have been improved as part of this application which will enhance the amenity and safety of the units.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 		
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 and limiting the use of borrowed light and ventilation.	The apartment layout and design maximises daylight penetration and natural ventilation.	Yes
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Acceptable	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Acceptable	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Acceptable	Yes
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	A primary balcony will be provided for all apartments in accordance with the minimum area requirements.	Yes
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace.	All ground floor apartments have direct access to courtyard areas.	Yes
4.9	Colours, materials and finishes		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	<p>A detailed colours, materials and finishes schedule has been submitted with the application.</p> <p>The colours and finishes are deep dark grey (colourbond Monument) roof metal cladding, brick wall to match existing, black aluminum screening, window boxes awning and window frames, timber fencing and white framed windows to existing building.</p> <p>The proposed external materials and finishes schedule are acceptable and</p> <p>will complement the existing residential flat building.</p>	Yes
5.	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	<p>(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.</p>	<p>The living areas to apartments 1, 2, 4 & 5 are north facing and will receive a minimum of 3 hours of direct sunlight to the living areas and private open space between 8am and 4pm June.</p> <p>The living areas to apartments 3 & 6 are south facing with apartment 3 having a west facing aspect for the</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		living area and private open space. Apartment 6 has east and west facing aspect to the living area and east aspect to the private open space. These apartments will still achieve the minimum 3 hours of sunlight between 8am and 4pm on 21 June for the living areas and private open space.	
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.		Yes
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.		Yes
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		Yes
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Acceptable.	Refer to Section 9.1 – Discussion of Key Issues.
	(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.	The design and layout of the proposed apartment addition will provide good daylight and natural ventilation for existing and future occupants.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Noted	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	Noted	Yes
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.	All rooms to the existing and new apartments will receive natural ventilation.	Yes
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.	As above	Yes
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to operable windows.	All kitchens are adjacent to window openings.	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.		Yes
5.3	Visual privacy		
	(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 	Acceptable.	Refer to Section 9.1 Discussion of key issues.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>from the private open space or windows of the adjacent dwellings</p> <ul style="list-style-type: none"> - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	Balconies face the street and communal area is to the rear of the building away from adjoining bedrooms and is consistent with other similar RFB in the area.	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. 	There are no view loss issues identified.	Not applicable.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.		
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Direct, obvious and secure access to and within the development will be maintained to the front of the building off Winchester Street.	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	A parking space is provided to them a secure place to the rear off Winchester Lane.	Yes
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	Acceptable	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	Acceptable	Yes
	(vi) Resident car parking areas must be equipped with security grilles or doors.	Acceptable	Yes
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Acceptable	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Acceptable	Yes
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Acceptable	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Acceptable	Yes
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Acceptable	Yes
6.	Car parking and access		
6.1	Location		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	One additional car space is provided to the rear of the building off Winchester Lane.	Yes
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	Acceptable. Reviewed and supported by Councils Development Engineers.	Yes
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.		
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.		
	(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.		
7.6	Storage		
	(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling. (ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles. (iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: (a) Studio apartments – 6m3 (b) 1-bedroom apartments – 6m3 (c) 2-bedroom apartments –	Acceptable.	No, however; as discussed above is considered acceptable given the overall improvement to the amenity of the units.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	8m3 (d) 3 plus bedroom apartments – 10m3		
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	Clothesline facilities is proposed to the rear of the building to the south boundary of the communal area.	Yes
	(ii) Provide internal laundry for each dwelling unit.	The washing machines are proposed within the bathrooms or adjacent to the bathrooms or kitchen. This is acceptable.	Yes
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.	Balconies are also provided to units 4, 5 & 6 which part of the area could be used for clothes drying facilities.	Yes
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. 	<p>No air conditioning units have been proposed as part of this application.</p> <p>A condition is included which requires ceiling fans to be provided to the bedrooms and main living areas.</p>	Condition is included requiring ceiling fans to be provided to the bedrooms and main living areas.

Responsible officer: Chahrazad Rahe, Senior Assessment Planner

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